

Rajesh Sharma Vs. Processing Incharge (Manager)

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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC
Raipur

Decided On : Jan-13-2014

Judge : R.S.Sharma, President & the Honourable Ms. Heena Thakkar,
Member

Appeal No. : Appeal No. FA/12 of 526

Appellant : Rajesh Sharma

Respondent : Processing Incharge (Manager)

Advocate for Def. : Shri. M.K. Vyas

Advocate for Pet/Ap. : Shri. R.K.Bhawnani

Judgement :

(Order)

R.S. Sharma, President:

1. This appeal is directed against the order dated 05.09.2012 passed by District Consumer Disputes Redressal Forum, Dhamtari (C.G.) (henceforth "District Forum") in Complaint Case No.13/2011, whereby the complaint of the appellant / complainant, has been dismissed, as not proved.

2. The case of the complainant before the District Forum in brief are that the complainant is resident of Ramsagar Para, Dhamtari and is agriculturist by profession. His father Shri Raghunandan Prasad Sharma, is having one acre land, his son Navin Sharma (minor) is having 2.37 hectare land, his mother Smt. Kumari Bai Sharma is having 0.41 hectare land and his nephew Ravi Sharma (minor) is also having 0.41 hectare land at village Siraudkala, Patwari Halka No.65/2, Revenue Circle Sihava, Tahsil Nagari, District - Dhamtari. The complainant looks after all agricultural lands of his father, mother, minor son and his nephew. On 14.06.2010, the complainant went to office of the O.P. for purchase of paddy seeds and on that day for purchase of 6 packets N.T.O.1001 paddy seeds he paid Rs.2,142/- and Rs.775/- as registration charges in cash with O.P and thus he purchased the paddy seeds but the seeds were not provided to the complainant on 14.06.2010 and the O.P. assured him that the seeds will be given after some time. The aforesaid paddy seeds were not given to the complainant by the OP till 03.07.2010. Then the complainant made oral complaint before Collector, Dhamtari regarding not providing paddy seeds by the O.P. At the fag end of July 2010, the OP provided Swarna paddy seeds to the complainant instead of paddy seeds which is mentioned in the registration form. The O.P. gave 1.80 qtls. of Swarana Paddy seeds to the complainant. The aforesaid seeds were given by the O.P. to the complainant after expiry of the period of sowing. Due to late delivery of the seeds, the complainant had sown the seeds in his field at delayed stage, therefore, the seeds were not germinated and field of the complainant was having barren land œ HINDI œ The complainant suffered loss of Rs.20,000/- per acre. The complainant made oral complaint for testing the seeds, but no response was given by the O.P. and the seeds have not been tested till filing the complaint. Therefore, the complainant filed consumer complaint before the District Forum seeking compensation of Rs.1,50,000/- towards loss of crop in 3 hectare of land, Rs.10,000/- towards expenses on sowing the paddy seeds and ploughing, Rs.50,000/- toward physical and mental agony. Thus the complainant filed complaint seeking total compensation of Rs.2,10,000/-.

3. In reply of the complaint, the OP/ respondent averred that no land was recorded in the name of the complainant at village Siraudkala, Tahsil Nagari. He is an agriculturist. Complainant is not authorized to file complaint on behalf of his

parents, son and nephew. On 14.06.2010, the complainant / appellant came to the office of the O.P. / respondent and he stated that he is owner of near about 3 hectare of land and he deposited a sum of Rs.775/- for registration charges. The complainant was registered and his registration No. is 327. The complainant was desirous to purchase M.T.O. " 1001 Paddy Seeds. Being asked by the complainant, cash memo was prepared. After preparation of the cash memo, the complainant again told the employees of the O.P./respondent that he did not want to purchase M.T.O. " 1001 Paddy Seeds and instead of M.T.O. " 1001 Paddy Seeds he want to purchase Swarna Paddy Seeds. On being asked by the O.P., the complainant stated that he want to purchase Swarna Paddy Seeds. The cash memo was corrected the instead of M.T.O. " 1001 Paddy Seeds, Swarna Paddy Seeds was entered in the cash memo. The appellant/complainant purchased paddy seeds valuing Rs.2,917/- but appellant again told that he was only having Rs.2,500/- on that day and he want to carry paddy seeds along with him and assured the O.P. that remaining amount of Rs.417/- will be deposited by him after some time. The employees of the O.P. asked the complainant that firstly he would be required to deposit full amount and then only the complainant would take the paddy seeds. The appellant left the paddy seeds and went away from the office of the O.P. Prior to 03.07.2010, the complainant/appellant had not come in the office of the O.P./respondent. On 03.07.2010, he came to the office of O.P. / respondent and paid Rs.417/- and asked for Swarna Paddy Seeds. At that time, Swarna Paddy Seeds were not available with the O.P., then the complainant annoyed and misbehaved with employee of the OP and threatened. The complainant snatched Cash Memo Book from the employee of the O.P. and endorsed that the seeds have not been received till today i.e. 03.07.2010. Then the OP obtained Swarna Paddy Seeds from the office of Seeds situated at Abhanpur and handed over to the complainant. The O.P. never committed any deficiency in service. The complainant has filed false and frivolous complaint, therefore the complaint of the complainant is liable to be dismissed and requested that sum of Rs.25,000/- be awarded to the O.P. from the complainant.

4. After having considered the material placed before it by both the parties, learned District Forum has dismissed the complaint.

5. Shri R.K.Bhawnani, learned counsel for the appellant / complainant argued that the District Forum has committed an error of law in holding that the complainant is unable to prove his case. Looking to the documents, it appears that the O.P. did not provide paddy seeds to the complainant on 14.06.2010. After long span of time, the seeds were provided to the complainant on 03.07.2010. Due to delayed supply of seeds, the complainant/appellant could not sow the seeds within time and he sown the seeds after lapse of time, therefore, the seeds were not germinated. Due to non-delivery of seeds by the O.P./respondent to the complainant/appellant within time, the complainant/appellant suffered loss of Rs.20,000/- per acre, but the District Forum erroneously dismissed the complaint of the complainant/appellant. Therefore, the order passed by the District Forum is liable to be set aside and the appellant / complainant is entitled to get compensation as mentioned in relief clause of his complaint.

6. Shri M.K. Vyas, learned counsel for respondent / OP on the other hand supported the impugned order of the District Forum. It has been submitted by him that after considering the evidence on record and perusing the affidavit and documents filed by both the parties, learned District Forum was right in observing that the appellant is not able to prove his case and has rightly dismissed the complaint.

7. We have heard counsel for both parties at length and have also perused the record of the District Forum.

8. The Hon'ble Supreme Court in the case of M/s National Seeds Corporation Ltd. vs. M. Madhusudhan Reddy, 2013 (3) CPR 589 (SC), has observed thus :-

"37. In Maharashtra Hybrid Seeds Co. Ltd. v. Alavalapati Chandra Reddy, this Court did not decide the issue relating to the alleged non-compliance of Section 13(1)(c) of the Consumer Act, but approved the reasoning of the State Commission which found fault with the appellant for not taking steps to get the seeds tested in an appropriate laboratory. In that case, the respondent had complained that the sunflower seeds purchased by him did not germinate because the same were defective. The complaint was contested by the appellant on several grounds. The District Forum allowed the complaint and declared that the

respondent was entitled to compensation @ Rs.2,000/- per acre in addition to the cost of the seeds. The State Commission rejected the objection of the appellant that the seeds and sent them for analysis or test for determining the quality. The National Commission summarily dismissed the revision filed by the appellant. In paragraph 4 of the judgment, this Court extracted the finding recorded by the State Commission for upholding the order of the District Forum and declined to interfere with the award of compensation to the respondent. The relevant portions of paragraph 4 are reproduced below :

"Thus, it is clear that it is on the permit granted by the Agricultural Officer that the complainants purchased seeds from the opposite parties and that the same Agricultural Officer visited the land and found that there was no germination. In view of the letter written by the Agricultural Officer to the opposite parties to which they sent no reply, it is clear that the same seeds that were purchased from the opposite parties were sown and they did not germinate. In view of the aforesaid letter of the Agricultural Officer, the District Forum felt that the seeds need not be sent for analysis. Moreover, if the opposite parties have disputed that the seeds were not defective they would have applied to the District Forum to send the samples of seeds from the said batch for analysis by appropriate laboratory. But the opposite parties have not chosen to file any application for sending the seeds to any laboratory. Since it is probable that the complainants have sown all the seeds purchased by them, they were not in a position to send seeds for analysis. In these circumstances, the order of the District Forum is not vitiated by the circumstance that it has not on its own accord sent the seeds for analysis by an appropriate laboratory.

* * * * *

It is clear from the letter of Agricultural Officer that the opposite parties in-spite of their promise, never visited the fields of the complainants. The opposite parties did not adduce any material to show that the complainants did not manure properly or that there is some defect in the field. In the absence of such evidence and in view of the conduct of the opposite parties not visiting the fields and having regard to the allegation in the complaint that there were rains in the month of September

1991 and the complainants sowed the seeds, it cannot be said that there is any defect either in the manure or in the preparation of the soil for sowing sunflower seeds."

"38. Reference can usefully be made to the orders of the National Commission in N.S.C. Ltd. v. Guruswamy, E.I.D. Parry (I) Ltd. v. Gaurishankar and India Seed House v. Ramjilal Sharma (2008) 3 CPJ 96. In these cases the National Commission considered the issue relating to non-compliance of Section 13(1)(c) in the context of the complaints made by the farmers that their crops had failed due to supply of defective seeds and held that the District Forum and State Commission did not commit any error by entertaining the complaint of the farmers and awarding compensation to them. In the first case, the National Commission noted that the entire quantity of seeds had been sown by the farmer and observed :-

"There is no doubt in our mind that where complainant alleges a defect in goods which cannot be determined without proper analysis or test of the goods, then the sample need to be taken and sent to a laboratory for analysis or test. But the ground reality in the instant case is that reposing faith in the seller, in this case the leading Public Sector Company dealing in seed production and sale, the petitioner sowed whole of the seed purchased by him. Where was the question of any sample seed to be sent to any laboratory in the case Whatever the Respondent/Complainant had, was sown. One could have appreciated the bonafides better, if sample from the crop was taken during the visit of Assistant Seed Officer of Petitioner " N.S.C. and sent for analysis. Their failure is unexceptionable. In our view, it is the Petitioner Company which failed to comply with the provisions of Section 13(c) of the Act. By the time, complaint could be filed even this opportunity had passed. If the Petitioner Company was little more sensitive or alert to the complaint of the Respondent/Complainant, this situation might not have arisen. Petitioner has to pay for his insensitivity. The Respondent/Complainant led evidence of State's agricultural authorities in support who made their statements after seeing the crop in the field. The onus passes on to the Petitioner to prove that the crop which grew in the field of the complainant was of 'Arkajyothi' of which the seed was sold and not of 'Sugar Body' as alleged.

He cannot take shelter under Section 13(c) of the CP Act. Learned Counsel's plea that Respondent/Complainant should have kept portion of seeds purchased by him to be used for sampling purposes, is not only unsustainable in law but to say the least, is very unbecoming of a leading Public Sector Seed Company to expect this arrangement."

9. Hon'ble Supreme Court in the case of Haryana Seeds Development Corpn. Ltd v. Sadhu and another, (2005) 3 Supreme Court Cases 198, has observed thus :-

"12. Having considered the rival contentions of the parties, in our opinion, all the appeals deserve to be allowed and the orders passed by the District Forum, confirmed by the State Commission and the National Commission deserve to be set aside. From the record it is abundantly clear that the appellant had constituted an Expert Committee. The said Committee had undertaken the exercise of inspection of seeds sold to farmers. It conducted field inspection and detailed report had been prepared. The Committee observed that crop condition varied from "satisfactory to excellent". It further observed that the reason for variation was other than the quality of seeds. The Committee stated :

Hence the variation in the condition of crop in the same lot of seed at different fields may not be attributed to quality of seed but the other factors including high salt concentration, brackish water, moisture content at the sowing time, sowing method and soil physical conditions, which also play a major role in germination of seed and crop stand."

13. In the operative part, the Committee concluded :-

"It may be concluded that variation in the condition of the crop may not be attributed to the quality of seed but it may be due to other factors including water quality used for irrigation, long dry spell, salt accumulation in surface layer, sowing methodology, moisture content at the sowing time and soil physical condition."

10. Hon'ble National Commission in the case of MAHYCO Seeds Ltd. Vs. G. Venkata Subba Reddy and Ors., III (2011) CPJ 99 (NC), has observed thus :-

"9. The Report of the Agricultural Officer who has opined that the crops failed due to genetic failure of the seeds is ambiguous. As already pointed out by Counsel for Petitioner, in the first place, it is in evidence that the inspection was conducted after the harvesting was over and as observed by the Joint Director (Agriculture) a senior authority, at this stage any assessment of defects in the seeds is not possible. The report itself is full of contradictions because while it states in one place that the germination is good, it does not adequately spell out the reasons for the so-called failure of the crops. In any case, genetic defect in seeds cannot be detected through visual inspections and would need to be tested in a scientific laboratory. We also note that there is adequate evidence on record that the Respondent did not take due care in adhering to the recommended schedule for planting the seeds, as also the type of land which is best suited for cotton seeds. Respondent's action in not informing the Petitioner about the so-called failure of the seeds and not involving him in the inspections also make his case further suspect. On the other hand, there is credible evidence that the seeds were tested and certified for genetic purity in a Government of India recognized laboratory and no evidence was led by Respondent to contradict these findings of the laboratory. Further, the onus to prove the defects in the seeds was not on the Petitioner but on the Respondent. This point has been squarely covered in a number of rulings of this Commission as well as the order of the Apex Court in Haryana Seeds Development Corporation Ltd. v. Sadhu and Anr., II (2005) CPJ 13 (SC)=II (2005) SLT 569."

11. Maharashtra State Consumer Disputes Redressal Commission, Mumbai, in the case of MAHYCO Seeds Ltd. vs Subhash Shrihari Devkore and Ors., III (2013) CPJ 150, has observed thus :-

"17. These Panchanamas also does not reflect any specific opinion of officers about the purity of Jawar seeds. Both Panchnamas appear that it were prepared as per say of the complainants. Moreover these Panchanamas reflect that as per the say of the complainants the Jawar crops were affected by disease and therefore there was no expected growth. Panchanama dated 31.03.3007 reflects that when the complainants had contacted the representative of opponent company they were asked to spray Biozyme and D.A.P. pesticides. Further

Panchanama dated 12.4.2007 prepared by Revenue Circle Inspector, Petwadaj clearly reflects that Jawar crops were affected by a disease and accordingly he has mentioned that crops are affected by disease. Thus, on any count both the Panchanamas are not at all useful for the complainants. On the contrary, both these Panchanamas falsify the contention of complainants that seeds were defective and opponent company has committed deficiency in service, etc. But it appears from the impugned judgment and order that District Consumer Forum without appreciating all these facts jumped to the wrong conclusion that Jawar seed which were supplied by opponent company to the complainants were defective and further opponent company committed deficiency in service. Such erroneous findings cannot be sustained.

18. Lastly, orally as well as by submitting additional written notes of arguments, Mr. Lavekar, learned Counsel for the complainants alternatively submitted to remand the matters back to the District Consumer Forum directing to decide afresh by obtaining expert evidence and giving opportunity of hearing to both sides. According to him as per the Government Circular the seed committee though required to inspect the field in presence of the representative of opponent company, the Guidelines given in the circular are not mandatory and therefore on such technical ground complainants should not suffer. But for the forgoing reasons that Panchanamas prepared by Agriculture Development Officer and Seeds Quality Control Inspector as well as Revenue Circle Inspector are not legal, submission of Mr. Lavekar that complainant's claim cannot be dismissed on technical ground, cannot be sustained. As far as his request for remanding of matter is concerned, he has also tried to support his submission by relying on decision of National Commission in the case of J.K. Agri-Genetics and Ors. V. Siddula Ramesh, etc., 2008 (1) CPR 42 (NC) and decision dated 23.2.2011 of this Commission in M/s Nirmitee Biotech v. Shri Anandrao Namdev Patil. But with due respect both these citations of National Commission as well as these State Commission cannot be applicable to the present cases as the facts are quite different. In the present cases, as sample of disputed Jawar seeds is not preserved, now it is not possible to obtain any expert report. Considering the facts of the present cases in our view it will be futile to remand back the matters to District Consumer Forum. Therefore, submission of Mr. Lavekar, learned Counsel

for the complainants to remand the matters cannot be considered."

12. National Commission, in the case of Shamsheer Singh Vs. Bagri Beej Bhandar and Anr., IV (2013) CPJ 186 (NC), has observed thus :-

"5. The State Commission has also observed that as per the report by the Haryana State Seed Certification Agency, the said seeds had been certified to be of prescribed standard. The State Commission has also given reference to some Government Instructions, in which it has been laid down that when there is a complaint by farmers regarding quality of seeds, an inspection committee has to be constituted, comprising two officials of Agricultural Department, one representative of concerned seed agency and scientists of Krishi Vigyan Kendra. The said instructions had not been followed by the Agricultural Department while giving their report.

6. The facts narrated above lead to the conclusion that the factum of the complainant having suffered a loss due to the poor quality seeds has not been established by any scientific or other evidence. Based on the report of one officer of the Agricultural Department, it cannot be stated that the version of the complainant is true."

13. In the instant case, the complainant filed a document i.e. photocopy of Cash Memo dated 14.06.2010 and Registration. In the Registration, the name of the complainant was mentioned and his registration no. is 327 and he was registered on 14.06.2010 for quantity of 1.80 quintal of Swarna Paddy Seeds. In Cash Memo, earlier the name of paddy was mentioned as M.T.O. - 1001 and quantity is mentioned as 7 packets and Rate Per Unit is mentioned as 1190=00 and Total Amount Rs.2,142/- is mentioned and in another photocopy of Cash Memo dated 14.06.2010 is also filed by the OP / respondent. In that Cash Memo, instead of M.T.O. - 1001, Swarna Paddy was mentioned and instead of 7 packets, 6 packets was entered and total amount was corrected from Rs.,2499/- to Rs.2,142/- and in both Cash Memos, it is mentioned that remaining amount of Rs.417/- was received on 03.07.2010.

14. The OP / respondent also filed a document "cht izek.kh dj.k gsrq iath;u lwph and [kjhQ 2010and11". In the said document in sl.no.81, the name of the complainant is mentioned and the date of sowing is mentioned as 14.06.2010. Looking to the above document, it appears that the appellant / complainant already received paddy seeds Swarna on 14.06.2010 from the OP / respondent.

15. In the instant case, the grievance of the complainant/appellant is that the seeds were not provided to him by the O.P. / respondent on 14.06.2010 and due to delayed delivery of the seeds, the complainant/appellant did not sow the seeds within time and due to this reason, the seeds were not germinated properly. The complainant specifically pleaded that the seeds were not germinated due to delayed delivery of the seeds, therefore, it is obligatory upon the complainant to make complaint before the officers of the Agriculture Department and also before the O.P. but no written complaint was made before the office of the Agriculture Department or the OP / respondent.

16. In the instant case, no document has been filed to indicate that the complainant/appellant made any written complaint before the officers of the Agriculture Department or before the O.P. regarding the non-germination or poor germination of the seeds. The appellant/complainant filed affidavit of himself and news bulletin published in the newspaper, but no other document to poor germination of the seeds, was filed by the complainant/appellant. One certificate has been filed by the respondent/O.P. before the District Forum, which was given by agriculturist Hanuman Sahu. In above Certificate it is mentioned that " HINDI œ

17. It is not expected that every farmers, who purchased seeds from Seed Corporation set apart some quantity of seeds for testing on the presumption that seeds would be defective and he would be called upon to prove the same through laboratory testing, but it is expected that if the seeds was not germinating properly or the germination of the seed is below standard and not satisfactory, then the agriculturists can move an application before competent authority for inspecting the field and they can make complaints before the competent authority for inspecting the field. But in the instant case undisputedly the complainant had not got the seed tested from any laboratory as required under the provision of Section

13(1)(c) of the Consumer Protection Act 1986. Appellant/complainant had also not moved any application before the concerned authorities for getting the seed of same batch number tested from any laboratory. Even the complainant did not move any application before Revenue Authority or Agriculture Development Authority for inspecting the field.

18. In the instant case, the appellant/complainant did not file any application before the District Forum for testing seed by a competent authority u/s 13(1)(c) of the Act 1986. The Agriculture Development Officer did not visit the field of the complainant and no Panchanama was made by the Agriculture Development Officer or Revenue Officer. Complainant did not issue notice to the appellant for inspection of field and for preparing Panchanama. Even no single document has been filed by the complainant/appellant to indicate that he made complaint regarding non-germination or poor germination of the seeds to authorities of Agriculture Department or O.P. / respondent.

19. In view of discussions, the finding recorded by learned District Forum, does not suffer from any infirmity or illegality and the finding given by learned District Forum in the impugned order is impeccable. Therefore, the impugned order dated 05.09.2012, does not call for any interference by this Commission.

20. Therefore, the appeal filed by the complainant/appellant is liable to be and is hereby dismissed. No order as to the cost of this appeal.

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