
(2013) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Ayurved Ltd.

APPELLANT

Vs

Gopal Krishan Gaushala Gurukul

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : 2013 3 CPJ 597 : 2015 3 CPJ 477

Hon'ble Judges : S.M.Kantikar J.

Final Decision : Petition allowed

Judgement

1. THE present Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986, challenging the order of the State Consumer Disputes Redressal Commission, Haryana, Panchkula (in short, "State Commission") dated 1.6.2012 passed in First Appeal No. 372/2008 titled as Ayurved Ltd. v. Shri Gopal Krishan Gaushala, which dismissed the Appeal by non -interference in the order passed by the learned District Consumer Disputes Redressal Commission (in short, "District Forum"), Kurukshetra in Complaint No. 357/2006 decided dated 24.12.2007. Brief Facts of this case as: That the Complainant purchased 100 bags of Uttam Super Gold Diary Special feed manufactured by Dabour Ayurved Pvt. Ltd. (OP No 2) and Uttam Super Gold Diary Special, Ayurved Ltd. (OP No. 3) from OP No. 1 i.e. P.K. Traders. It is alleged that the Complainant is Gaushala and had 25 numbers of Hostern Frigidian Category cows. It was further alleged that above said feed was given to cows as suggested by representative of Company by mixing the said feed with Banola Khal. Thereafter, on 3.2.2006, the cows started feeling unwell and some of the cows felt weakness and milk was decreased. One of the cows died due to this reason and the same was buried by the Complainant without any post -mortem taking the death as natural death. It was further alleged that all the cows were treated by the doctors of NDRI, Karnal, HAU, Hissar and the local veterinary surgeon in spite of treatment 11 cows have died from 3.6.2006 to 16.7.2006 and postmortems of all cows were performed by veterinary surgeon, Kurukshetra. On F.I.R. police sent visra to FSL Madhuban, Karnal. The FSL report dated 17.7.2006 stated that organo phosphorous pesticide was detected in Exhibits sent to FSL for testing. In this

way, feed was found poisonous feed and due to this reason the cows have died and suffered a loss of Rs. 13,35,773. Therefore, there was deficiency in service on the part of the Opposite Parties.

2. NOTICE being issued, opposite parties appeared and contested the complaint, raising plea that OP Nos. 2 and 3 are dealing in the manufacturing of best quality feed and the same is supplied in the market after proper checking through OP No. 1. There is no complaint whatsoever from any corner except the Complainant. It was submitted that sample of feed has neither been sent in presence of OPs nor necessary measures have been adopted for sending the sample and as such the alleged report of FSL, Madhuban the analysis is not sustainable. It was further submitted that the cows of Complainant might have died due to some other factor. As per blood report dated 26.6.2006 the cows have died due to Theileriosis which was an outcome of stress and existing environment of Gaushala. Thus, there was no deficiency in service on their part. On appraisal of the pleadings of the parties and evidence brought on record, the District Forum allowed the complaint and directed the OPs to pay Rs. 2,74,000 cost of ten dead cows, medicines charges of Rs. 1,03,273, cost of feed Rs. 32,500 and Rs. 50,000 as compensation for harassment.

3. AGGRIEVED by the order of District Forum respondent filed an appeal No. 372/2008. The State Commission heard the parties and dismissed the appeal with observation as - - Undisputedly, the Complainant purchased 100 bags of Uttam Super Gold, Dairy Special Dabour Ayurved Ltd. feed on 24.5.2006 at the rate of Rs. 325 per bag from OP No. 1, which was manufactured by OP No. 2 and OP No. 3. It is also not disputed that on 3.6.2006 the cows started feeling unwell and 11 cows have died from 3.6.2006 to 16.7.2006. It is also disputed that F.I.R. was registered. The Counsel for Respondent has placed on record of FSL report and as per report of FSL an organophosphorous pesticide was detected by the FSL while testing.

Since, the FSL report clearly mentioned that cows of the Complainant taking poisonous feed, thus the Appellant/Opposite Party is held liable for compensation.

4. AGAINST the said dismissal order of State Commission the petitioner preferred this Revision Petition. The Respondent/Complainant, Sh. Gopal Kishen Gaushala, was served in this case. Mr. Rayi Kumar, clerk for Mr. Ajay Pal Nookala Sumanth, Advocate for Respondent appeared in this case on 18.2.2013. Counsel for the Respondent was given time to file Vakalatnama and counter affidavit on 18.2.2013. However, on 15.7.2013, none appeared on behalf of the Respondent. Therefore, final arguments were heard in the absence of the Respondent or his Counsel. It may be mentioned here that the record reveals that the memo of appearance was filed on behalf of Respondent, which was taken on record. Proof of receipt of costs of Rs. 10,000 is placed on record, which was received by the Respondent, as per the postal receipt.

5. WE have heard the Counsel for petitioner who argued vehemently and have

perused the documents on record like Post -mortem and FSL Repot. It is noted that the FSL reported "cause of death of cow only". The FSL report did not comment upon quality and contents of the feed supplied/manufactured by the Petitioner was poisonous and due to which the death of cows was occurred. We do not find any proximity on the death of the cow with the cattle feed. Petitioner further contention that the Complainant/Respondent is not a consumer as it is being a body corporate involved in the commercial activities and earning profits. It is not an individual, who is earning for his livelihood.

6. THE document on record i.e. report of cattle feed sample from Director General, Dairy Development, Haryana, Panchkula which was addressed to Dy. Director Animal Husbandry, Kurukshetra mentioned that after analysis of approved lab regarding sample (KKR -17, KKR -18) found as per Bureau of Indian Standard. The veterinary doctor who has conducted the post -mortem and issued a report did not specify anything about the feed which was taken by the cows and no toxic level mentioned about the quantity of organo phosphorous pesticide. No samples of feed were referred to the FSL to establish that it contains organ phosphorous poison. Even otherwise the post -mortem done by the veterinary doctor did not say anything about the lethal dose.

7. THEREFORE , firmly we cannot say that the cows which died only by such feed. The grazing animal can eat many substances and therefore it is not possible to locate the source of poison. There is evidence on record that those cows were suffering from Theileriosis a tick borne disease, which was confirmed by blood smear examination. Therefore, the death of cows attributed to the disease Theileriosis. Therefore, we are of considered view that born the Fora below erred in appreciation of evidence and records on file. Accordingly the orders passed by the Fora below are set aside and we allow this revision petition. No order as to costs.