

(2005) 08 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

B Narasimha Reddy

APPELLANT

Vs

Indo -American Hybrid Seeds India Ltd

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Citation : 2005 4 CPJ 324 : 2006 1 CPR 44

Hon'ble Judges : I.VENKATANARAYANA , M.SHREESHA J.

Judgement

1. AGGRIEVED by the order of the District Forum, Chittoor in C.D. No. 129/1999, the complainant preferred this appeal.

2. THE brief facts as set out in the complaint are that the complainant purchased 3000 banana tissue culture plants from the opposite party for raising in 3 acres of land in March, 1998 at Rs. 6 per plant by paying a total of Rs. 18,260. The tissue culture plants are meant for uniform growth, size of fruit and duration of harvesting period is less. It is the case of the complainant that though the complainant made the land ready for transplantation of banana plants by applying manure and fertilizers, there is no uniform growth in size and the size of the fruit is varying and got only 600 bunches from 3000 plants and the crop was ready for harvest in the month of June, 1999. The complainant approached the Horticultural Officer, who inspected and issued a certificate dated 15.8.1999 stating that the plants supplied by the opposite party were defective. The complainant approached the District Forum alleging that the expected normal yield for 3000 plants is Rs. 2,25,000 but the present expected yield is only Rs. 30,000 and that he has spent Rs. 1,00,000 to raise the tissue and suffered damages to a tune of Rs. 1,90,000. The opposite party filed written objections contending that the complainant is not a Consumer and that they have supplied large quantity of the same varieties of tissue culture banana plants even in Karnataka, Gujarat, Maharastra, Delhi, Andhra Pradesh and Punjab during the same period and their performance is good and the problem to the complainant is only due to improper and inadequate cultivation practice followed. The pathologist and virologist of the opposite partys company tested the quality

before selecting the mother plants and every batch of plants selected for dispatch are screened for virus before they are delivered to the customers. The opposite party further stated that his Assistant Marketing Manager in his report dated 15.9.1999 has observed that the land is sloppy and water holding is more and observed major defect that the complainant has purchased the net pot plants in March, 1998 and planted in the field in June, 1998 and the plants were in the poly bags for more than 3 months as against 1.5 to 2 months and because the plantlets remained in the poly bags for longer period might have developed pot bound effect in the initial rooting system which resulted in delayed root development, bunch emergence/formation and initial growth of the suckers. They contended that the complainant having adopted the flow of irrigation, he should have provided feeding channel, absorption of steady moisture as well as nutrients for proper and continuous growth. The Assistant Marketing Officer reported that the root growth is very poor because of the alkalinity of the soil and very high PH which was confirmed by the soil test report affecting the availability of major nutrients, i.e., organic carbon and particularly the potash which is major ingredient in tissue composition of banana are low, the yield is also low. The presence of nematode lesions on the regions indicate poor performance which affected leaves as well as petioles and normally there should be a dozen healthy leaves at the time of bunch formation and due to leaf canopy being reduced the bunches got exposed to direct sun which resulted in cracking and yellowing. It is further contended that presence of parthenium and other perennial indicate neglected plantation and that banana cultivation require individual ring basin irrigation through independent feeding channel whereas the complainant followed flood irrigation and due to lack of wind break of sesbania species around the plantation caused the tearing of leaves which reduced the photosynthesis efficiency by 25% and became factor for decline in yield.

3. BASED on Exs. A1 to A7, B1 and Ex. C1 i.e., Commissioners report and the pleadings put forward, the District Forum came to the conclusion that there is no defect in the plants supplied and dismissed the complaint.

4. AGGRIEVED by the said order, the complainant preferred this appeal. The learned Counsel for the appellant submitted that the Commissioners report clearly showed that 40% of the plants do not have any bunches or fruits, 20% plants were destroyed and there was no uniform size of bunches and fruits and, therefore, the opposite parties supplied defective plants.

5. THE learned Counsel for the respondent/opposite party submitted that the appellant/complainant did not adhere to proper irrigation facilities and did not take proper care and precaution and also the alkalinity of the soil was also responsible for the low yield and that there was no defect in the plants supplied by them.

6. ON perusal of the material on record i.e., the Commissioners report, Ex. C1, and the Horticultural Officers report, Ex. A4, we observe that there was no uniform growth or uniform fruit size, the size of the fruits are varying and that

the fruits ripened at a smaller size and cracking is also observed. The Horticultural Officer observed that the size of the fruit is very small and submitted in her report that in her opinion the lesser size of the fruits, bunches, low yield and non-uniform growth may be due to defective plant material used. Ex. C1, which is the Commissioners report also states the fact that in the entire extent of three acres of land 40% of the plants were not having any bunches or fruits and in one acre 20% of the plants were destroyed. The learned Counsel for the appellants also drew our attention to page 2 and page 11 of the brochure. In page 2, "duration of secondary nursery maintenance", it is stated in the period between February and May, the duration would be 55 to 60 days and this duration could be reduced to 40 -45 days during the period of favourable weather from June to January. He drew our attention to the table in which the particulars of fertilizer dosage and grammes per plant is given and submitted that he followed the prescribed standards mentioned in the brochure for application of fertilizers.

7. THE Supreme Court in III (1998) CPJ 8 (SC), Maharashtra Hybrid v. Alavalapati Chandra Reddy and Others, observed that "it is probable that the complainants have sown all the seeds purchased by them and they would not be in a position to send the seeds for analysis. Under these circumstances the opposite parties have not chosen to file any application for sending the seeds to any laboratory for proving that the seeds are not defective".

8. THIS judgment is relevant in the instant case since the respondent/opposite party did not choose to file any application for sending the plant to any appropriate laboratory for testing. Therefore, we rely on the next alternative i.e., the Horticultural Officer and the Commissioners reports. The respondent/opposite party did not file any material to support their contention that the appellant did not adhere to the normal standards and not taken the precautionary care and, therefore, there is deficiency of service on behalf of the respondent/complainant.

9. THE appellant did not file any documentary evidence to prove that he spent Rs. 1,00,000 on fertilizers and expenses to raise the tissue culture plants. he submitted that the present expected yield is only Rs. 30,000. Taking into consideration the evidence on record, we observe that there was no uniform size of the fruit and that the yield was lower than what was expected and the complainant admittedly purchased 3,000 banana plants from the opposite party, which fact is not disputed by the opposite party in counter and we, therefore, award an amount of Rs. 1,20,000 (3,000 x Rs. 40 per bunch) less Rs. 30,000 realized = Rs. 90,000 towards crop loss, agricultural expenses incurred and compensation together with costs of Rs. 1,000.

10. IN the result this appeal is allowed in part and the order of the District Forum in C.D. No. 129/1999 is set aside directing the respondent/opposite party to pay an amount of Rs. 90,000 to the appellant/complainant towards crop loss expenses incurred and compensation together with costs of Rs. 1,000. Time for compliance six weeks. Appeal partly allowed.