

(2009) 02 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Bahar Agrochem And Feeds Pvt. Ltd.

APPELLANT

Vs

Prasad Gurusidappa Prachande And Ors.

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : 2009 2 CPJ 137

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Final Decision : R.P. dismissed

Judgement

1. THE Complainant had planted grapes in 2 hectores and after 2006 October cutting, the grapes were growing excellently. On 16.11.2006, the applicant visited the shop of opposite party No. 3 who told him about the product Zymegold manufactured by opposite party No. 1 and distributed by opposite party No. 2. He was further informed that the said product was excellent bio - fertilizer for grape farms and helps not only in increase in the growth, but results in large quantities of fruits and flowers. It was further stated that the use of Zymegold increases size as also production and quality. Accordingly, the applicant purchased 5 Itrs. Packing of Zymegold under receipt (bill) No. 1254. The applicant sprayed the same on grapes farm but found after 7 -8 days that it resulted in damage of leaves and grape bunches as a result of which, there was major damage to the grapes farm. The Complainant sent written application dated 2.1.2007 to the Agricultural Development Officer, Zilla Parishad, Solapur who visited the farm and prepared Panchnama. As per report of the Committee, Zymegold was found to be defective and adulterated. Complaints were filed with the Government of Maharashtra by Grapes Farmers who suffered loss by use of Zymegold and Scientists from N.R.C. (National Research Centre for Grapes), Manjri Farm, Post Solapur Road, Pune visited the grapes farm and took samples of grapes, leaves and Zymegold. The Director, N.R.C. (Input and Quality Control), Maharashtra Government, Central Building, Pune tested the same and as per report in the Zymegold bio -fertilizer 2 -4D weedicide particles were found. The applicant claims that yield from 2 hectores land was Rs. 5,00,000 each year and he has suffered total loss. It is further stated in the complaint that the

grapes in the next 3 years would also give reduced yield. Accordingly complaint was filed demanding compensation of Rs. 12.50 lakh.

2. THE respondents in their reply have denied the allegations in toto and have raised several preliminary objections. They have challenged the reports on which reliance has been placed by the Complainant. It is submitted that loss is not due to use of Zymegold but the grapes were damaged in Solapur area due to several natural causes.

3. THE opposite party No. 1 filed an application for transfer of the matter to appropriate civil Court on the grounds that the Complainant has relied upon certain test reports, which raise essentially technical questions; the matter being highly technical in nature and requires evidence of experts in the field and cannot be dealt with in a summary manner; proper cross -examination of the witnesses and rebuttal evidence has to be tendered; chemists and experts from both sides are required to be examined and cross -examined which cannot be dealt within summary manner; the genuineness of the documents, genuineness of reports, genuineness of gravity of documents and the correctness of the contents thereof as also genuineness of handling agencies is required to be examined. Therefore, it is submitted that the matter cannot be determined by the Consumer Forum and requires transfer to the Court of Civil jurisdiction. This application was opposed by the Complainant and it was submitted that if cross -examination of experts is necessary, the same is permissible before the Consumer Forum and no case has been made out for transfer of the case to the civil Court.

4. THE District Forum rejected the application. Appeal filed by the present petitioner was dismissed by the State Commission and it was observed that there was nothing complicated in the consumer complaint; Consumer Forum is the competent Statutory Forum to decide such complaints and as such matters can be decided on the basis of the report of the laboratory.

5. WE have heard the learned Counsel appearing for the petitioner. It is submitted before us that the detailed evidence is required in the matter; that the complicated and complex issues are involved which cannot be determined by Consumer Forum in summary inquiry as provided under Section 13(1) of the Consumer Protection Act, 1986. Reliance has been placed by him on a number of judgments.

6. IN order to decide as to whether the Consumer Forum can deal with and decide the matter, it is to be seen as to what are the facts in each case. No strait-jacket formula can be adopted or prescribed. Therefore, the decision in each case would depend upon the facts and circumstances of the case. However, it is necessary to refer to some judgments of the Apex Court where guidelines and general principles have been laid down in such matters. In *Dr. Merchant and Ors. v. Shrinath Chaturvedi, III* (2002) CPJ 8 (SC)=IV (2002) SLT 714, the Apex Court while dealing with the case of medical negligence has laid down: "11. Further, under the Act the National Commission is required to be headed by a

retired Judge of this Court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the Civil Court.

12. It is next contended that such complicated questions of facts cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the Civil Court. For trial to be just and reasonable long drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that Legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguard..."

The Apex Court in this judgment has referred to Section 13 of the Act under which consumer complaint is required to be dealt with.

7. IN CCI Chambers Co -op. Hsg. Society Ltd. v. Development Credit Bank Ltd., III (2003) CPJ 9 (SC)=V (2003) SLT 185, the Apex Court while quoting the observations made in Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi (supra) has observed: "6. It cannot be denied that Fora at the National level, the State level and the District level have been constituted under the Act with the avowed object of providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the Fora established under the Act. These Fora have been established and conferred with jurisdiction in addition to the conventional Courts. The principal object sought to be achieved by establishing such Fora is to relieve the conventional Courts of their burden which is over -increasing with the mounting arrears and where the disposal is delayed because of the complicated and detailed procedure which at times is accompanied by technicalities. Merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any Forum under the Act to the person aggrieved."

7. "...a three -Judge Bench of this Court recently in Dr. J.J. Merchant and Ors. (supra), specifically dealt with the issue as to the guidelines which would determine the matter being appropriately dealt with by a Forum under the Act or being left to be heard and decided by a Civil Court. This Court noticed that the Fora under the Act are specifically empowered to follow such procedure which may not require more time or delay the proceedings. A Forum under the Act is

entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the principles thereof, also making use of such of the powers of Civil Court as are conferred on it. The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which enter -tainability of a complaint by a Forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary inquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the Fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a Judge of the Supreme Court. The State Commission is headed by a person who is or has been a Judge of the High Court. Each District Forum is headed by person who is, or has been, or is qualified to be a District Judge. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a Forum under the Act..."

8. IN *Punj Lloyd Ltd. v. Corporate Risks India Pvt. Ltd.*, I (2009) CPJ 10 (SC)=I (2009) SLT 278, the Apex Court has re-affirmed the observations made in *Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi* (supra) and *CCI Chambers Co -op. Hsg. Society Ltd. v. Development Credit Bank Ltd.* (supra).

9. APPLYING aforesaid principles to the facts and circumstances of the case of the matter before us, we find that the issues involved are simple in nature and cannot be said to be complicated questions of facts or law which cannot be decided in consumer proceedings. The Consumer Fora are competent to deal with such issues and wherever necessary, cross -examination of witnesses and experts can be permitted. The issue to be decided is whether bio -fertilizer Zymegold was used and the use thereof has damaged grapes crop resulting in loss. There may also be ancillary issues raised which can be dealt with and decided by Consumer Fora. If necessary, experts who have given reports can be permitted to be cross -examined and rebuttal evidence can also be permitted if it is found necessary for the decision of the case.

10. IN view of above, we do not find any merit in this revision and as such, the same is hereby rejected with no order as to costs.