

(2013) 05 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Banta Ram

APPELLANT

Vs

Jai Bharat Beej Company , P H I Seeds Ltd.

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 417 : 2013 2 CPJ 617

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Judgement

1. THE present revision petition has been filed against the judgment and order dated 11th October 2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula (the "State Commission ") in Appeal no. 987 of 2009, which was filed against the final order dated 15th June 2009 passed by the District Consumer Disputes Redressal Forum, Kaithal ("the District Forum ") in Complaint case no. 300 of 2005.

2. THE petitioner in his complaint before the District Forum has stated that the petitioner/ complainant is an agriculturist by profession and own 10 acres of land at village Ujhana Tehsil and District Kaithal. The petitioner purchased the seeds of paddy namely Paddy Hybrid Pioneer PHB 71 from the respondent on 13.05.2005 and paid Rs.8,200/- to the respondent as the price of the seeds. The petitioner is fully prepared his field before sowing the above said seeds and took all care and cautions and even obtained the test report of the soil. Proper irrigation was done but in spite of taking all care and cautions and putting a lot of hard work by the petitioner the germination as assured by the respondents did not take place. On the directions of Deputy Director, Agriculture Department, Kaithal, a team was formed which inspected the fields of the petitioner in which the seeds supplied by the respondent was sown by the petitioner and the seeds were found to be of very poor quality and it was also found by the team on inspection that only 30 to 35% of germination have took place on the seeds so supplied by the respondent. The respondent no.1/ opposite party no.1 in their reply have stated that the complaint is not maintainable against respondent no. 1 as the respondent no. 1 is the authorised dealer of producer of complaint seed

(respondent no. 2). Respondent no. 1 has sold the seed in question in a sealed packing and in the same condition in which the respondent no. 2 supplied to respondent no. 1. Respondent no. 1 is the licence holder from the Deputy Director, Agriculture Kaithal and is the authorised shop keeper in respect of the seeds in question for sale.

3. THIS defect in seed (though denied) if proved than only the producer (manufacturer) i.e., respondent no. 2 is responsible and not the respondent no.1 (dealer). The petitioner has purchased the seeds in question for commercial purpose, so the petitioner is not a consumer of the respondents.

4. THE report (if any) of Deputy Director, Agriculture, Kaithal is false and has been prepared in collusion with the petitioner without inspection of field. No notice was given to the respondents for the alleged inspection of field. The report (though false) does not attribute the quality of seed for low germination. Petitioner may be asked to prove the ownership as well as cultivation by producing cogent evidence. However, the seeds were of good/ excellent quality and are certified by the State of Andhra Pradesh Seeds Certification Agency and also is notified seed by Central Government of India. The Agriculture Department, Kaithal also recommends the use of the seed in question. The seeds supplied by the respondent to the petitioner were not of poor quality. Low germination (though denied) may perhaps due to reasons totally external to the quality of seed. The germination of seeds depends upon so many factors such as appropriate period of sowing, the soil condition, climate lessor of lack soil, moisture, pests and disease, application of fertilisers and nutrient availability in the soil. It is wrong that the complainant prepared his field improper manner and took all care and caution. It is denied that the petitioner obtained any test report of soil. The report, if any, is false and has been obtained in collusion. It is wrong that proper irrigation was done. It is wrong that the germination was low. The report of team formed by the Deputy Director, Agriculture, Kaithal is false and has been prepared in collusion with the petitioner without the inspection of field. No notice was given to the respondents for the alleged inspection of the said team. The report does not attribute the low germination (though denied) the quality of seeds. The germination depends upon so many reasons external to the quality of seeds.

5. RESPONDENT no.2/ OP no. 2 in their reply have stated that the seed in question was not got tested in any laboratory by the petitioner or by the official of Agriculture Department. No sample was taken or sent for analysis to the appropriate laboratory through this Hon "ble Forum or through any agency. The Hon "ble Forum has got no jurisdiction to entertain and try this complaint because the matter is complicated in nature involving many questions of facts and law which requires detailed investigation and examination of elaborate evidence.

6. THE petitioner purchased the seeds in question for commercial purpose. So the petitioner is not a consumer of the respondents. The report (if any) of

Deputy Director, Agriculture, Kaithal is false, and has been prepared in collusion with the petitioner without inspection of the field. No notice was given to the respondents for the alleged inspection of field. The report (though false) does not attribute the quality of seed for low germination. The report of Agriculture Department is without the identification of the field through revenue Patwari. However, the seeds in question was of good/excellent quality and is certified by the Central Government of India vide notification no. S O 647 (E) dated 09.09.1997. The Agriculture Department, Kaithal has been recommending the use of the seed in question to the farmer of the area. The seeds supplied by the respondents were not of poor quality as alleged. It is denied that the germination of the seed in question was only 30% as alleged. The low germination (though denied) may perhaps due to reasons totally external to the quality of seed. The germination of seeds depends upon so many factors such as appropriate period of sowing, the soil condition, climate, moisture, pests and diseases, application of fertilizers and nutrient availability in the soil, etc. The report of the team formed by the Deputy Director Agriculture, Kaithal is false and has been prepared in collusion with the petitioner without the inspection of a field. No notice was given to the respondents for the alleged inspection of the said team. The report does not attribute the low germination (though denied) the quality of seeds. The germination depends upon so many reasons external to the quality of seeds.

7. THE District Forum vide order dated 15.06.2009 have observed as under: "the counsel for the respondents has laid much stress on the evidentiary value of the Agriculture Officer stating that the same was got prepared from the Agriculture Officer in collusion with the petitioner. No notice of the same was send to the respondent for associating in the inspection as required by the direction of Director Agriculture, Haryana, Panchkula vide letter no. 52-70 dated 03.01.2002. Counsel for the respondent further argued that the respondent no. 2 has taken a preliminary objection compliance of mandatory provision of Section 13 (i) (c) of Consumer Protection Act was not made as no sample for determining the defect in the seed has been send to any appropriate laboratory and on this score alone the complaint of the petitioner is liable to be dismissed in support of his arguments. The counsel for the respondents has relied upon 2009 (1) CPC page 471 (NC) Maharashtra Hybrid Seeds Co. Ltd. Vs Parchuri Naryana, 2006 (1) CPC Page 36 (NC) Hindustan Insecticides Ltd. Vs Kopolu Sambasiva Rao and Ors, 1993 CPC Page 530, State Commission, Haryana, Chandigarh, Jasdev vs Deputy Director, Agriculture Ambala and Ors. In the present case also, the petitioner has filed to get the seed in question analysed from any approved Laboratory. Without the report of the analyses, it cannot be determined whether the seed supplied by the respondent were of inferior quality. Further, it is submitted by the counsel for the respondents that the seed in the present case was certified by Central Government of India vide notification no. S O 647 (E) dated 09.09.1997, wherein the quality supplied to the petitioner by the opposite parties is also listed as PHB 71 (paddy) at S No. 7. However, learned counsel for the petitioner to refute the argument of the counsel for the opposite parties has submitted that the

petitioner was just an ordinary agriculturist and he was not expected to preserve the seed for laboratory test and on the other side, the respondent also could exercise this right and send the seed for analysis to an authorised laboratory which the opposite party failed to do and these circumstances, the report of Agriculture Officer must have taken as conclusive proof and binding on the respondents. In support of his contention, he has relied upon 1998 (2) CPC page 359 (Supreme Court) Maharashtra Hybrid Seeds Company Ltd., vs Alavalapati Chandra Reddy and Others 11 (1998) CPJ Page 320 (Andhra State Commission) Maharashtra Hybrid Seeds Co. Ltd., vs Parsad and Ors. With due respect to the above cited judgments, we are of the view that the same are not applicable in the instant case keeping in view of the latest view as expressed by the Hon "ble National Commission 2009 (1) CPC Page 47 Maharashtra Hybrid Seeds Co. Ltd., vs Parchuri Narayana and our own Hon "ble State Commission as cited above and also the fact that the Agriculture Officer failed to associate the representative of the respondent and also did not follow the direction given by his own Department and also that the seeds supplied by the respondents to the petitioner was duly certified and the Agriculture Department itself advise the farmers to use the same as mentioned in the news item. Keeping in view the above discussion, we are of the view that the petitioner has failed to prove that the seeds supplied by the respondents to the petitioner were of inferior quality. This complaint, therefore, is dismissed with no order as to costs ".

8. AGGRIEVED by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission vide its order dated 11.10.2012 has observed as under: "It is an admitted case of the petitioner that he had not got tested seed from the laboratory as required under the provisions of Section 13 (1) (c) of the Consumer Protection Act, 1986. It is also not the case of the complainant that he ever had moved an application before the concerned authorities for getting the seed of same batch number tested from the laboratory. However, the report submitted by the official of the Deputy Director Agriculture, Kaithal revealed that "the nursery of PHB 71 has been sown in about 2 Kanal area and the plant stood in the nursery was about 50% only. The nursery of other varieties, from different seed source, at the nearby site is in satisfactory condition. The soil and water conditions seems to be satisfactory. The circumstances indicate that the quality of seed appears to be one of the reasons for poor plant stand in the nursery ". There was no evidence in the shape of report from appropriate laboratory regarding seed to be substandard. Thus, the report given by the Agriculture Department is hardly of any significance with respect to the claim sought by the complainant. The District Forum after considering each and every aspect of the case has rightly dismissed the complaint. Thus no ground to interfere in the impugned order is made out. Hence, finding no merit in this appeal, it is dismissed ".

Hence, the petitioner has filed this present revision petition before us. We have heard the learned counsel for the petitioner and have gone through the record. The main grounds of the petitioner are as follows: - that the State Commission

and also the District Forum failed to consider the fact that whatever seeds purchased by the petitioner were sown by him and he had no seed with him to send for testing, whereas, respondent no. 1 was in the business of selling seeds and certainly must be having the stored seeds of that same batch and could have made it available for testing. - the State Commission has erred in not considering the report of the Agriculture Department which in their report categorically state that "the plant stand in nursery is about 50% only. The soil and water condition seems to be satisfactory. The circumstances indicate that the quality of seed appears to be one of the reasons for poor plant stand in the nursery ". - the State Commission has failed to appreciate the law laid down by the Supreme Court as in M/s National Seeds Corporation Ltd., vs M Madhusudhan Reddy (AIR 2012 SC 1160) where it has been held that "procedure for trail of complaint - complaint by farmers/ growers of seeds supplied by appellants resulting in less filed - sample seeds not available with complainants as all seeds purchased were sown - Appellant also not providing sample of seeds sold for analysis - Consumer Forum appointing agricultural experts to ascertain status and cause of failure of crop - Compensation awarded to complaints on basis of report of experts - Procedure adopted by forum cannot be said to be contrary to section 13 (1) (c) - Order of Forum not liable to be set aside on specious ground that procedure prescribed under section 13 (1) (c) had not been followed ". - the State Commission has erred in not considering the fact that District Forum could have asked the respondent no. 1 to produce the same batch seed and could have asked it to get it tested from certified laboratory.

9. ALONG with the present revision petition an application for condonation of delay of 11 days has been filed. The reasons given for the delay are as under: "The petitioner went to his counsel in State Commission at Chandigarh on 02.02.2012 and collected the documents and gave it to the counsel in Delhi on 05.02.2013. Two days were taken for drafting the present revision petition leading to the delay of 10 days in filing the present revision petition ".

10. PETITIONER has not even mentioned when he received the impugned order and has not accounted for the period from the passing of the impugned order on 11.10.2012 to 02.02.2013 and when he went to his counsel in Chandigarh to collect the document. Indisputably the petitioner had not got the seed tested from any laboratory as required under the provisions of section 13 (1) (c) of the Consumer Protection Act, 1986. He had also not moved an application before the concerned authorities for getting the seed of same batch number tested from any laboratory. Further, the report of the Agriculture Department cannot be accepted as no notice of inspection of the field for associating them with the inspection. Hence, we agree with the findings of the District Forum as also the State Commission that the petitioner has failed to prove that the seed supplied by the respondents to the petitioner were of inferior quality. Further, the report given by the Agriculture Department is hardly of any significance with respect to the complaint sought by the petitioner. In view of the above, we find that there is no jurisdictional error, illegality or infirmity in the order passed by the State

Commission warranting our interference. The revision petition is accordingly dismissed with no order as to cost.