
(1996) 01 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

BHATI POULTRY FARM

APPELLANT

Vs

KEWALRAMANI HATCHERIES

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Citation : 1996 0 NCDRC 41 : 1996 1 CLT 635 : 1996 1 CPC 193 : 1996 1 CPJ 239 : 1996 1 CPR 66

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : P.A.S.RAO

Judgement

1. THIS First Appeal is directed against the Order dated 28th November, 1992 passed by the Rajasthan State Commission at Jaipur in Complaint Case No. 80/91 dismissing the complaint for the reasons recorded in the order passed in Complaint No. 79/91 decided also on 28th November, 1992.

2. THE facts in the nutshell are these : The complainant placed an order on M/s. Kewalramani Hatcheries for the supply of about 7,500 day old B.V. 300 hybrid layer chicks. The Order provided that the opposite party shall vaccinate the chicks with "FI" and "Marek's" vaccination as per laid down procedure. The delivery of the chicks was made by the opposite party. According to the complainant the opposite party failed to carry out Marek's vaccination and over 5,700 chicks died of Marek's disease. The chicks were effective as they were not administered the Marek's vaccination at the time of supply and no vaccination was carried out even thereafter. The death due to Marek's disease is supported, by the reports of: (a) Indian Veterinary Research Institute, Izatnagar, (U.P.); (b) Disease Diagnostic Laboratory, Animal Husbandry Department, Government of Rajasthan, Jaipur; and (c) National Avian Health Labs, Gurgaon. The complainant alleged that he was aggrieved with the failure of the opposite party to provide services as per the direction of the appellant in her order dated 29th December, 1989 placed on the opposite party and the complaint was filed under Section 2(1) (o) of the Consumer Protection Act, 1986 alleging deficiency in service. The

complainant alleged that the opposite party failed to provide service of vaccination and/or for providing defective service. The complainant claimed a sum of Rs. 8,83,976.80 on account of losses suffered due to failure of the opposite party to render the service of providing Marek's disease vaccination to the chicks supplied to the complainant. On being noticed, the opposite party raised several objections, inter alia, firstly, that the complainant purchased the chicks from the opposite party for commercial purpose and thus the complainant is not "consumer" within the meaning of the Consumer Protection Act, 1986 and secondly that the opposite party had supplied to the complainant chicks duly vaccinated against the Marek's disease as per practice after a day of the hatching and the complainant was advised to adhere to the schedule for further vaccination to be conducted by the complainant and there was no hiring of service of the opposite party for further vaccination.

3. BY the impugned order the State Commission stated that the facts stated in the complaint are similar to those in Complaint Case No. 79/91 and the opposite party in that case contested the complaint on various grounds including the failure of the opposite party to render service of providing Marek's disease vaccination to the chicks supplied to the complainant before supply and thereafter. Since the defence was identical with that which was taken in Complaint Case No. 79/91 and the documents and affidavits were also by and large the same as well as the contentions raised on behalf of the parties also being the same, the State Commission adopted the reasons given in the order passed in Complaint Case No. 79/81 decided on 28.11.92 and for the same reason the complaint was dismissed.

4. AT the time of hearing, the learned Counsel for the Appellant did not seriously challenge the finding of the State Commission that the complainant had purchased the chicks from the opposite party for commercial purpose. The chicks were purchased by the complainant not for use in some venture for self-employment for earning livelihood, but the purchase was for trading activity carried on for profit on a large scale by the complainant. We uphold the finding and the conclusion of the State Commission that the chicks purchased by the complainant are goods as defined in Section 2(l)(i) of the Act and the complainant is not "consumer" as defined in Section 2(1)(d)(i) as he had purchased the chicks for commercial purpose. The main submission of the learned Counsel for the Appellant is that the opposite party agreed to provide the service of subjecting the chicks to Marek's disease vaccination as specified in the said order dated 29th December, 1989 and the opposite party failed to provide the service of Marek's disease vaccination. The State Commission has referred to the material on record and after a detailed discussion came to the conclusion that the complainant had not hired the services of Marek's disease vaccination after the supply of chicks to the complainant and that before supply, there was Marek's disease vaccination within one day of their hatching. It had also not been established on the record that the Marek's disease was due to failure/faulty vaccination against the disease by the hatchery of one day old chicks. We uphold

these findings of the State Commission. In the result, the appeal fails and is dismissed leaving the parties to bear their own costs.