

(2011) 07 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Brijesh Kumar Maurya

APPELLANT

Vs

Kausambi Cold Storage Pvt. Ltd.

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 387 : 2011 3 CPR 216 : 2011 4 CPJ 265

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Appeal dismissed

Judgement

1. PER SURESH CHANDRA, MEMBER This revision petition has been filed by the complainant against the dismissal of his complaint by the District Forum initially and later in appeal by the State Commission. The impugned order dismissing the appeal of the petitioner was passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (?State Commission? for short) on 11.8.2009.

2. BRIEFLY stated, it is the case of the petitioner that on 29.3.2006 he stored 130 bags of potatoes in the respondent?s cold storage. On 3.8.2006 when the petitioner received 10 bags of potatoes from the lot of potatoes stored by him with the respondent by paying necessary service charges, it was found that big size of buds had come out from the potatoes. The nephew of the petitioner, therefore, brought it to the notice of the representatives of the respondent whereupon he was told by those representatives to take back the materials since it cannot be restored. He was further told that later on some solution will be provided by the Managing Director of the cold storage. Similarly, on 10.08.2006 also when the petitioner went to the cold storage of the respondent and searched the potatoes, it was found that buds were coming out from the potatoes stored in the cold storage and the potatoes were seen to have become black and loose. In this way, it is the grievance of the petitioner that whole potatoes got destroyed due to negligence, carelessness and improper handling by the respondent OP. When the complaints made to the Managing Director of the OP did not meet with any success and the OP refused to compensate for the damage to the potatoes belonging to the complainant, the complainant lodged his complaint with the

District Forum. On appraisal of the issues and the evidence adduced, the District Forum did not find any merit in the claim put forth by the complainant and hence the complaint was dismissed. Aggrieved by the order of the District Forum, the complainant challenged the same by filing an appeal against it before the State Commission. The State Commission also dismissed the appeal both on the grounds of limitation as well as on merits. In its impugned order, the State Commission while upholding the finding of the District Forum, has observed that the District Horticulture Officer had examined the goods stored in the cold storage on the request of the complainant but found that the goods, i.e., potatoes in question did not suffer from any damage claimed by the complainant. Both the fora below have returned the finding that there was no deficiency in service of the OP cold storage.

We have heard learned counsel for the petitioner. His main contention is that the inspection of the cold storage was carried out by the representative of the District Horticulture Officer on oral instructions and the report of the inspecting officer was also conveyed orally and there is nothing on record filed by way of report by the District Horticulture Officer in the matter. In view of this, learned counsel has argued that since the District Forum has unsuited his claim relying on the inspection carried out by the District Horticulture Officer, the orders of both the fora below suffered from serious infirmity inasmuch as the so-called inspection report is not available on the record and it is confirmed through information obtained by the petitioner under the RTI Act that there is no written report available in the office of the District Horticulture Officer, Kaushambi in this regard.

3. WE have gone through the order of the District Forum in which the evidence adduced by the parties has been discussed in detail. Absence of report in writing does not per se mean that the report referred to by the District Forum was wrong or without any basis. The petitioner has not disputed that the inspection was carried and that too on his request only. In any case, it was open to the petitioner to produce other evidence and proof in support of his claim in respect of the damage done to the potatoes stored by him in the cold storage as per his complaint. Having failed to do so before the fora below, the petitioner cannot be allowed to challenge the concurrent finding of fact returned by the fora below which clearly shows that there was no merit in the claim put forth by the petitioner. There are no other legal issues involved in the matter. In these circumstances, we do not see any ground to interfere with the concurrent orders of the fora below dismissing the complaint. Revision petition filed by the complainant, therefore, stands dismissed at threshold.