
(1998) 04 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

DILIP KR.JANA

APPELLANT

Vs

WATER BASE LTD

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Citation : 1998 2 CPJ 447

Hon'ble Judges : A.K.Bhattacharjee , Monoranjan Ghosh J.

Final Decision : Complaint allowed

Judgement

1. THIS is a petition of complaint under Section 17 of the Consumer Protection Act, 1986. The petitioner carries on business of Aqua Culture and Shrimp farming as a proprietor under the name and style M/s. River view Aqua Culture having its office at Kolaghat in the District of Midnapore, West Bengal. The petitioner initiated the project in order to maintain the livelihood of his family. The petitioner entered into an agreement with the opposite party No. 1, namely, the Water Base Limited carrying on business for supply of Hi- tech Prawn (P. Monodon) feed from Mellore of Andhra Pradesh for supply of feed for prawn worth about 10 lacs. The opposite party No. 1 asked for a Bank Guarantee for supply of feed and accordingly the petitioner requested the Union Bank of India for a Bank Guarantee of an amount of 10 lacs in favour of the Water Base Limited. The prawn feed was to be supplied for a period of five months i.e. from the 10th March to 9th August, 1995 and had a claimed period for another three months till 10.11.1995. The above mentioned prawn feed was required from 10th March, to 9th August for the culture and two crops, one from the end of February to June, 15 for the first crop and from the 1st week of July for the second crops. The instant dispute relates to the first crop only.

2. IT has been alleged by the petitioner that the opposite party No. 1 failed to supply any feed inspite of the furnishing of Bank Guarantee by the petitioner and the seeds stocked in the project pond of the petitioner died due to want of feed resulting in huge loss to the petitioner. IT has been alleged that upto 30th March, 1995 the prawns were in good condition which has been certified by the Fishery

Officer of Ramnagar Block on the 22nd March, 1995. The petitioner's case is that due to want of feed the prawns became weak from 30th March, 1995 and due to ill health there was total death of the live stock of prawns causing a setback to the project of the petitioner. The petitioner has accordingly claimed a total amount of Rs. 10,40,000/- as direct loss, Rs. 2,00,000/- towards loss of business and Rs. 1,00,000/- for suffering due to mental agony. The case is contested by the opposite party No. 1, the Water Base Limited by filing a written objection. Its first contention is that the case is barred by limitation. It denies the allegation of deficiency of service in supplying the prawn feed as alleged by the petitioner. According to this opposite party prawn feed of a total quantity of 1700 kgs. was supplied to the petitioner through its distributors M/s. Sudarban Marine Products Pvt. Ltd. As, however, the petitioner had obstructed invocation of the Bank Guarantee by the opposite party No. 1 by filing a civil suit in the City Civil Court, Calcutta, further supply" of prawn feed was not possible. This opposite party also raises a defence that the present consumer case is not maintainable in view of the pendency of the aforementioned civil suit in the City Civil Court, which passed an ad interim order of injunction restraining them from invoking the Bank Guarantee. According to opposite party No. 1 the prawns were destroyed at the Aqua Culture Site of the petitioner due to the virus infection inflated at the site known as White Spot disease. The opposite party No. 1 lastly raised an objection that the case was not maintainable in the absence of Sundarban Marine Products Pvt. Ltd. The Sundarban Marine Products Pvt. Ltd. was accordingly added as a party as opposite party No. 2, and it contested the case supporting the opposite party No. 1. Points for determination in this case are : (i) Was there any deficiency in the supply of prawn feeds by the opposite party No. 1 as alleged by the petitioner? (ii) Is the opposite party No. 1's claim that the supply of prawn feed was made through the Subdarban Marine Products Pvt. Ltd. true? (iii) What relief if any the petitioner is entitled to. Decision Regarding Points Nos. (i) & (ii):

Admittedly there was a contract for the supply of prawn feed between the petitioner and opposite party No. 1. Admittedly also the petitioner executed a Bank Guarantee in favour of the opposite party No. 1 through the Union Bank of India. The petitioner's case is that in spite of the agreement the opposite party No. 1 failed to honour its contract and did not supply the prawn feed resulting in the death of bulk of the prawn seeds cultivated by him. The claim of the opposite party No. 1 on the other hand is that it supplied the feed according to the contract through the distributor opposite party No. 2. During the hearing the petitioner admitted that he had purchased some prawn feed from opposite party No. 2 but his contention was that it was an independent purchase from the market. In order to prove that the opposite party No. 2 was actually a distributor under opposite party No. 1, the opposite party No. 1 filed a distributorship agreement before the Commission. On a comparison with the original copy of the agreement which was requisitioned from the opposite party No. 1 it was found that although the agreement was made on 1st February, 1994 but it was

prepared on a non-judicial Stamp paper purchased on 9th May, 1994. This unmistakably proves that the agreement filed before the Commission is a forged one. We, therefore, reject the opposite party No. 1's contention that it appointed opposite party No. 2 its distributors for the supply of prawn feed to the petitioner. That being so we are inclined to believe the version of the petitioner that a quantity of prawn feed was purchased from opposite party No. 2 independently from the open market. This led to the filing of a civil suit by the petitioner to stop the invocation of the Bank Guarantee in favour of the respondent/opposite party No. 1. The learned City Civil Court issued an ad interim injunction in this respect and the matter rests there. The said suit is still pending.

3. THIS leads to the second point of argument raised by the opposite party No. 1 that the present consumer case is not maintainable on account of the pendency of the civil suit. We also reject this plea as we are satisfied that the subject matter of the civil suit is not the same as in the present complaint case. Regarding the point of limitation the opposite party No. 1 has not stated specifically how the case is barred by limitation. However, on a scrutiny of the papers we find that the Bank Guarantee was received on 18.3.1995 and the same was executed on 10.3.1995. The present case was filed on 30.1.1997 before the Commission. It is also evident from the Cash Memo, issued by Sundarban Marine Products Pvt. Ltd. that the petitioner purchased prawn feed from them on 4.4.1995. In any case, the documents filed show that the case was filed within two years from the date of arising of the cause of action.

4. AS regards the deficiency in supply of the prawn feeds it is found that excepting 1700 kgs. of such feeds purchased from opposite party No. 2 no other feed was supplied to the petitioner. AS regards the feed purchased from opposite party No. 2 we have already held that the same was an independent purchase by the petitioner. The opposite party No. 1 has not produced any evidence to show that any other prawn feed was ever supplied to the petitioner. On the other hand their plea is that they could not supply the feed as the petitioner obstructed opposite party No. 1 from invoking the Bank Guarantee. Taking all the facts and circumstances together we are of the opinion that there was deficiency in service on the part of the opposite party No. 1 as alleged by the petitioner. Regarding point No. (iii): In view of our finding that there was deficiency in service on the part of the opposite party No. 1 in the matter of supplying the prawn feed to the petitioner, the petitioner is certainly entitled to get compensation from the opposite party No. 1. The question is what should be the amount of compensation payable to him. The petitioner has demanded Rs. 12.40 lacs as direct loss suffered by him, Rs. 2 lacs for loss of business and Rs. 1 lac for mental agony. The petitioner has submitted an estimate about the cost of production and the total loss sustained by him for the period from March to 30th June, 1995 in the Schedule-A to the petition of complaint. It appears therefrom that prawn culture was made at Tajpur Mouza in an area of 5.26 hectares. The production per hectare is about 2 tonnes. The petitioner has based his estimate on the basis that there was total production of 8 tonnes. The total production for

5.26 hectares would be about 10.52 tonnes. Giving allowance for about 30% which was prey to natural decay, the total production would be about 7.50 tonnes. Assessing the loss as per the estimate given by the petitioner the loss comes to Rs. 1,55,000/- per tonne. The total loss thus estimated would be 1,55,000/- x 7.50 tonnes = 11,62,500/-. It may be noted that the estimate given by the petitioner has not been challenged by any counter estimate by the opposite party No. 1. After taking into consideration the entire facts, therefore, we are inclined to hold that the petitioner is entitled to get Rs. 11,62,500/- (Rupees eleven lacs sixty two thousand and five hundred only). We are not inclined to allow any separate amount as business loss as we have already taken into account the possible profit which the petitioner expected to get. More over no evidence has been adduced by the petitioner to prove any special loss of business. We, however, think that the petitioner is entitled to get compensation for the harassment and mental agony suffered by him on account of the shattering of his business for the unscrupulous act of the opposite party No. 1. As already pointed out, the opposite party No. 1 has acted dishonestly in this case and put up a manufactured document which is most reprehensible. We, therefore, allow a damage of Rs. 10,000/- (ten thousand) on account of harassment and mental agony suffered by the petitioner. Besides, we also allow an amount of Rs. 2,000/- (two thousand) as cost of this case. This case is accordingly allowed for a total amount of Rs. 11,74,500/- (Rupees eleven lacs seventy four thousand and five hundred only) i.e. Rs. 11,62,500 + 10,000 + 2,000. The entire decretal amount must be paid by the opposite party No. 1, the Water Base Limited within 30 days from the date of communication of this order. The case is dismissed as against opposite party No. 2. Complaint allowed.