

(2013) 04 NCDRC CK 0113

In the National Consumer Disputes Redressal Commission

Haryana State Co-Operative Supply And Marketing Federation Ltd APPELLANT

Vs

Iffco Tokio General Insurance Company Limited RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 238 : 2013 2 CPJ 364

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Final Decision : Appeal allowed to accept

Judgement

1. THIS revision petition has been filed by the complainant, namely, Haryana State Co-operative Supply and Marketing Federation Ltd. (HAFED) in respect of its insurance claims which was allowed by the respondents/opposite parties partly.

2. BRIEFLY stated, the facts which are relevant for deciding this revision petition are that the petitioner got four sites of wheat stocks insured with OP Insurance Co. for a sum of Rs.35.28 crores vide insurance cover note No.41275855 dated 4.6.2008 against standard fire and allied perils for the period from 4.6.2008 to 3.9.2008. During the intervening night of 14/15th June 2008, because of heavy rains, the wheat stocks of the complainant got damaged. According to the petitioners, as per the report of the surveyor, an amount of Rs.24,24,710/- was payable to them but the OPs paid only Rs.4,72,263/- and did not pay the balance amount despite repeated requests sent to them. A consumer complaint, therefore, came to be filed against them with the District Forum for the balance amount along with interest @ 18% p.a. and costs. The OPs/respondents contested the claim and submitted that after considering the reports of the two surveyors, the claim of the petitioner was finally assessed by a senior surveyor who arrived at a net loss of Rs.4,86,412/- which was the maximum liability of the respondents. Accordingly, a Demand Draft dated 5.2.2009 of Rs.4,72,381/- was sent to the petitioners by them in full and final settlement of their claim vide respondents " letter dated 19.2.2009. It was, however, admitted by the

respondents that a sum of Rs.14,031/- was further admissible to the petitioner. Denying any kind of deficiency in service, the respondents prays for dismissal of the complaint. After hearing the parties and considering the evidence before it, the District Forum accepted the complaint and issued direction to the respondents vide its order dated 19.3.2010 to make the payment of a sum of Rs.19,52,447/- to the complainant/petitioner with interest @ 9% p.a. from the date of the complaint till realisation along with cost of Rs.5,000/-. Aggrieved by this order of the District Forum, the OPs filed an appeal before the Haryana State Consumer Disputes Redressal Commission, Panchkula ("State Commission " for short) which allowed the appeal and set aside the order of the District Forum with the direction to the OPs/respondents to pay Rs.14,031/- to the petitioner along with interest @ 6% p.a. and Rs.2,000/- as cost of litigation. The petitioner has now challenged this order of the State Commission through the present revision petition.

3. MR . Yashpal Rangi, Advocate appearing for the petitioner has submitted that the amount of the Demand Draft sent by the respondents was never agreed or accepted by the petitioner as full and final settlement at any point of time. He submitted that the State Commission while setting aside the order of the District Forum has not given any reasoning for its view. Learned counsel said that the State Commission has also failed to consider letter dated 6.4.2009 written by the petitioner to the respondents wherein it was specifically stated that the DD sent by the respondents was accepted under protest. In the circumstances, learned counsel contended that the impugned order is based on wrong appreciation of the evidence and misunderstanding about the correct factual position which has led to the reversal of the well-reasoned order of the District Forum.

4. WE have considered the submissions made by learned counsel and also perused the record. It is not in dispute that the petitioner received the demand draft dated 5.2.2009 for Rs.4,72,263/- along with a covering letter dated 19.2.2009 from the respondents. Contents of the letter in question which have been reproduced by the State Commission in its impugned order have not been denied by the petitioner. It is specifically written in its letter that the opposite parties were enclosing the demand draft in question towards full and final settlement of the claim of the petitioner and for this purpose they had also attached a discharge voucher which the petitioner was requested to sign and send back to the respondents as acknowledgement towards full and final settlement. Admittedly, the petitioner encashed the demand draft in question although they did not sign and send back the discharge voucher in question. Here, if we accept the contention of the learned counsel, the petitioner should not have encashed the demand draft in case the offer of full and final settlement was not acceptable to them and they should have written back to the respondents about the inadequacy of the offer. Rather than writing back and expressing their protest, the petitioner chose to deposit the demand draft and yet later on send their protest against the amount. In view of this, the petitioner by its own conduct forfeited its right to plead that it did not accept the offer in

full and final settlement of its claim against the opposite party. The State Commission has considered this important aspect in the impugned order and given the following reasons in support of its impugned order while accepting the appeal and setting aside the order of the District Forum:- "We find force in the contention raised on behalf of the appellants. The contents of the above said letter make it clear that the Demand Draft bearing No.143178 dated 5.2.2009 for Rs.4,72,263/- was sent by the opposite parties to the complainant towards the full and final settlement of complainant 's claim. Admittedly, the complainant got encashed the above said Demand Draft. Meaning thereby, the complainant had received the amount in full and final settlement and therefore no further cause of action arose in favour of the complainant to re-open its claim. If the complainant was not agreed with the payment of Rs.4,72,263/-, then the demand draft could have been returned. Thus, it is not a case where the claim of the complainant can be re-opened for any further payment. However, at the same time it is admitted by the opposite parties that a sum of Rs.14,031/- was further admissible in respect of complainant 's claim. "

We agree with the view taken by the State Commission. The petitioner cannot be allowed to accept the offer of the respondents only in part which suited their convenience and reject the condition subject to which the offer was made. We are not impressed by the plea taken by the learned counsel and do not find any reason or justification to interfere with the impugned order while exercising our revisional jurisdiction to interfere with the impugned order under section 21(b) of the Consumer Protection Act, 1986. Consequently, we dismiss the revision petition at the threshold with no order as to costs.