
(1997) 07 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

HIMALAYA COLD STORAGES

APPELLANT

Vs

P.LAKSHMINARAYAN

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Citation : 1998 1 CPC 263 : 1998 1 CPJ 542 : 1998 1 CPR 165

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , K.Ranga Raos J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant in C.D.C. 489/94 District Forum, Chittoor was filed by one P. Lakshminarayana against M/s. Himalaya Cold Storage represented by its Managing Partner and opposite parties 2 to 5 being the other partners, claiming a sum of Rs. 3,03,686/- with interest at 12% p.a. from 7.6.1994 on account of total loss of potatoes of 73,000 kgs. stores in the cold storage of the first opposite party.

2. ACCORDING to the complainant, he kept the potatoes weighing 73,000 kgs. in the first opposite party-cold storage from 29.3.1994 to 24.4.1994 and paid the necessary rent, for which the first opposite party issued a receipt. The complainant went on tour from 25.5.1994 to 6.6.1994 and after return from tour he came to know that all the potatoes kept in the cold storage of the first opposite party are spoiled. On verification, the complainant found that his potatoes are all spoiled, the second opposite party promised to pay the value of the potatoes at the rate of Rs. 4/- per kg. as per the market rate i.e. Rs. 2,92,000/- but failed to pay the amount. Alleging that the damage to the potatoes was caused due to over storage of goods and shortage of power and carelessness of the opposite parties, the complainant claimed a sum of Rs. 2,92,000/- being the value of potatoes at Rs. 4/- per kg. with interest of Rs. 11/680/- from 7.6.1994 to 30.9.1994 i.e. in all a sum of Rs. 3,03,680/- with 12% subsequent interest.

The first opposite party filed a counter on 25.1.1995 denying that the complainant stocked his potatoes weighing 73,000 kgs. in the first opposite party-

cold storage between 29.3.1994 to 24.4.1994. The rent for the stock of 73,000 kgs. was fixed at Rs. 51,100/- is correct and admitted the receipt of the said sum on 24.4.1994. They denied that the complainant was away from 25.5.1994 to 6.6.1994. They further stated that the opposite party No. 1 has not over stocked the goods beyond its capacity and that there was no carelessness or negligence on their part resulting in damage to the potatoes of the complainant. It was further stated that the complainant never made any demand for the alleged loss and the opposite parties are not liable to pay any amount to the complainant. To the legal notice issued by the complainant, a reply was sent on 7.9.1994 and they denied the allegation that the opposite parties agreed to pay Rs. 2,92,000/- on 7.6.1994. According to the opposite parties, the complainant had originally stocked 93,250 kgs. of potatoes totalling to 1865 bags of 50 kgs. each between 30.3.1994 to 24.4.1994. Subsequently the complainant took delivery of 23,250 kgs. between 9.6.1994 and 11.6.1994. There was total failure of electricity and it was not restored till 5.6.1994. Consequently several stocks of different persons suffered uniform damage due to lack of power supply including the potatoes of the complainant. The complainant with an ulterior motive did not lift all his stocks between 9.6.1994 and 11.6.1994, but lifted only 23,250 kgs. even though there was larger undamaged stock of potatoes. The complainant also represented that he would claim damages from the Government instead of opposite party. Trusting the words of the complainant, the opposite party No. 1 issued a receipt No. 17 anti-dating it to 24.4.1994. But they admitted that they fixed the rent at Rs. 51,100/- for 73,000 potatoes and a sum of Rs. 50,400/- was received towards rent. It is, therefore, submitted that the complainant himself was responsible and negligent by not lifting the available stock which was in good condition between 9.6.1994 and 11.6.1994.

3. ACCORDING to Condition Nos. 6 and 7 on the reverse of R.R. Receipt, the opposite parties are not responsible for any loss suffered by the complainant, and the complainant should have insured his goods and the opposite parties are not personally responsible for the loss said to have been caused to the stocks of the complainant as the loss was caused due to the negligence of the complainant in not lifting the stocks inspite of the fact that sufficient stock was available for lifting the same and due to the non-availability of electricity, part of stocks might have been damaged for which the opposite parties are not responsible, and prayed for dismissal of the complaint. The opposite parties 2 and 4 filed a memo adopting the counter of opposite party No. 1. The opposite party No. 5 remained exparte.

4. BEFORE the District Forum, no oral evidence was adduced by both the parties. On behalf of the complainant Exs. A-1 to A-5 were marked. The opposite parties did not file any documents. The District Forum held that the printed condition in Ex. A-4 receipt shows that the opposite parties are not liable for any damage caused to me goods due to the failure of the machinery is neither stranged and the failure of electricity cannot be taken advantage of the opposite party as it is their duty to preserve the material at any cost and they cannot take shelter of

the fact that the goods are not insured. There was no reply by the opposite parties to Ex. A-5 notice as no such reply was produced and as it was mentioned in the notice that the prevailing rate of potatoes was Rs. 4/- per kg., the District Forum directed the opposite party to pay to the complainant a sum of Rs. 2,92,000/- being the cost of 73,000 kgs. calculating at the rate of Rs. 4/- per kg., with interest at 12% p.a. from 7.6.1994 till realisation, and also awarded costs of Rs. 300/- to the complainant. Aggrieved by the said order, this appeal is preferred by the opposite parties. During the pendency of the appeal on 23.9.1996 interim stay of the operation of the order was granted on the petitioners depositing a sum of Rs. 75,000/- to the credit of CD. 489/94 within a period of six weeks from that date. But the appellant/opposite parties did not comply with the said order. Consequently, the stay was vacated on 18.12.1996 and stay petition is dismissed.

5. IT is contended by the learned Counsel for the appellants that there was failure of southern power grid at Srisailam and at some other places and there was no power supply between 3.6.1994 and 5.6.1994. Although the opposite parties are having generators, the potatoes might have been spoiled on account of the power failure from 3.6.1994 to 5.6.1994. Since the power failure was due to the circumstance beyond the control of the opposite parties, it cannot be said that there is any deficiency of service on the part of the opposite parties. We are not inclined to agree with this contention. The very purpose of storing the potatoes with the opposite parties in their cold storage is to preserve the potatoes from being spoiled. IT is for the opposite parties to take adequate precautions and arrange generators of sufficient capacity to meet the contingency of failure of power, especially when the opposite parties are charging the rentals.

6. IT is next contended that according to Condition Nos. 6 and 7, the opposite parties are not responsible for any loss that may accrued to the complainant and the complainant should have insured his goods and that therefore, the opposite parties are not liable to pay any amount. We do not see any force in the aforesaid contention. The very purpose of paying very high rents and storing potatoes is to preserve them. Therefore, the opposite parties are responsible for the loss. Merely because the complainant did not insure the goods, the opposite parties cannot evade their liability to make good the loss suffered by the complainant on account of the potatoes being spoiled due to the failure of cold storage. It is next submitted that the complainant with ulterior motive did not lift the stocks between 9.6.1994 and 11.6.1994 even though there was larger undamaged stock of potatoes are available and he gave a representation to the opposite parties that he would claim damages from the Government and insisted upon the opposite parties to issue another receipt antedating it to 24.4.1994. But the opposite parties did not adduce any oral or documentary evidence to show that the receipt issued for 73,000 kgs. dated 24.4.1994 was antedated and in fact it was issued after 11.6.1994. The opposite parties in their reply notice which was not filed before the District Forum, but produced a copy of the same before

us, stated that the complainant lifted 23,250 kgs. Even then there was still undamaged stock of potatoes between 9.6.1994 and 11.6.1994, no oral evidence was produced to show that by 24.4.1994 there was 73,000 kgs. + 23,250 kgs. were available. The receipt issued by the opposite parties for 73,000 kgs. shows various dates on which the complainant stored the potatoes for which he paid the rents as evidenced by receipts. We are, therefore, not inclined to accept the version of the opposite parties, that the complainant lifted between 9.6.1994 and 11.6.1994 23,250 kgs. of potatoes and that he represented to the opposite party No. 1 that he would claim the damages from the Government. We are also not inclined to accept the contention of the appellants that sufficient opportunity was not given to them to adduce evidence in support of their case.

The opposite party No. 1 filed its counter on 25.1.1995. The District Forum passed the order on 15.7.1995. But the opposite parties did not adduce any evidence in support of their version. We are, therefore, satisfied that in spite of receiving notice and filing counter, the opposite parties did not adduce any evidence before the District Forum although it had six months' time before the case was disposed of. We, therefore, do not see any force in the contention of the Counsel for the appellants that the case must be remanded to District Forum to give an opportunity to the appellants to adduce evidence. 14. It may not be out of place to notice that during the pendency of the appeal, interim stay was granted on condition of the petitioners depositing a sum of Rs. 75,000/- i.e. representing nearly 1/4th of the decretal amount. But the opposite parties did not prove its bona fides by depositing the said sum and they failed to deposit the amount not only within the time stipulated in the order but also before the date on which the appeal came up for hearing finally on 4.7.1997. We are, therefore, satisfied that there are no bona fides on the part of the appellants. 15. It is next submitted that the complainant did not adduce any evidence to show that the price of the potatoes was Rs. 4/- per kg. But it is to be seen in the lawyer notice Ex. A-5 dated 12.7.1994, it was clearly stated that the opposite party No. 1 admitted the damage and promised to pay the market rate of potatoes at Rs. 4/- per kg. and the total amount of Rs. 2,92,000/- for 73,000 kgs. In the reply notice, a copy of which is produced before us by the learned Counsel for the appellants, the opposite parties did not dispute the rate of Rs. 4/- per kg. mentioned in the notice and on the other hand it was stated that the electricity failed and a receipt dated 24.4.1994 was anti-dated and denied that the opposite party made any promise to make good the loss. But they did not dispute the rate of Rs. 4/- per kg. mentioned in the Ex. A-5 notice issued by the complainant. We are, therefore, of view that the District Forum rightly held that the prevailing of potatoes rate at that time was Rs. 4/- per kg. and awarded a sum of Rs. 2,92,000/- for 73,000 kgs. We, therefore, do not see any merits in this appeal. In the result, the appeal is dismissed accordingly. There shall be no order as to costs in this appeal. Appeal dismissed. _____