

(2008) 05 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

JASWINDER SINGH

APPELLANT

Vs

PUNJAB PESTICIDES AND SEEDS

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Citation : 2008 4 CPJ 444

Hon'ble Judges : S.N.Aggarwal , Jasbir Kapoor J.

Advocate : Kirpa Shankar Prasad , Rohit Kapoor , S.S.Kahlon , Vikram Bali

Judgement

1. -THIS judgment will dispose of three appeals, namely Appeal No. 1278 of 2003, Jaswinder Singh v. M/s. Punjab Pesticides and Seeds and Others and Appeal No. 1322 of 2003 M/s. Punjab Pesticides and Seeds v. Jaswinder Singh and Others and Appeal No. 1401 of 2003, Vam Organic Chemical Ltd. v. Jaswinder Singh and Others as all these appeals are directed against the same impugned order dated 13. 6. 2003 passed by the learned District Consumer Disputes Redressal Forum, Mukstar (in short "district Forum"). For the sake of convenience, facts are taken from Appeal No. 1278 of 2003 and the parties would be referred by their status in this appeal.

2. JASWINDER Singh appellant was an agriculturist of Village Enna Khera, Tehsil Malout, District Mukstar. He and his family members owend 40 killas of land. He had taken about 22 killas of land on lease from the Gram Panchayat for the year 2002-2003 in the open auction held on 8. 4. 2002 for a sum of Rs. 27,000. He had sown paddy crop in 32 killas of land. M/s. Punjab Pesticides and Seeds, respondent No. 1 run the business of selling pesticides, weedicides and fertilizers, etc. They are the agents of Vam Organic Chemical Ltd. (respondent No. 3) and sell Drick insecticides, Alpha chemicals, Agrimass chemicals, Ram Ban and other medicines. It was further pleaded that the appellant had gone to the shop of respondent No. 1 for the purchase of insecticides and weedicides and it was suggested to the appellant by respondent No. 1 that if he sprays carbonic fertilizer by mixing Ram Ban with Power Plus, Agrianilo, Anilophos 30% herbicide then the yield of paddy crop will be much more and the crop will not be affected

by any insects, etc. Believing the representation made by respondent No. 1 the appellant purchased these insecticides, weedicides and bio-chemicals from the shop of respondent No. 1 on 13. 6. 2002 for an amount of Rs. 780, on 15. 6. 2002 for an amount of Rs. 4,370 and on 19. 6. 2002 for an amount of Rs. 3,950 for which bills were issued by respondent No. 1. The payment was made to respondent No. 1 by the appellant through M/s. Bhullar Brothers who were his Commission Agents. It was further pleaded that as advised by respondent No. 1, the appellant mixed both these chemicals with fertilizer and sprayed the same in the paddy crop sown in 32 killas of land. He was shocked to find out that after few days the paddy crop started withering and was completely damaged.

The appellant lodged the complaint against respondent No. 1 with the Assistant Plant Protection Officer, Malout who along with the Agriculture Officer, Mukstar inspected the spot and submitted the report. The shop of respondent No. 1 was also sealed and a case was also registered against respondent No. 1 under the Insecticides Act.

3. IT was further pleaded that the appellant had taken a loan from P. A. D. B. , Malout and since his crops were damaged, therefore, he could not repay the loan and the amount of interest went on piling up. As a result, the appellant got mental depression. Respondent Nos. 2 and 3 were responsible for manufacturing sub-standard insecticides/pesticides while respondent No. 1 was liable for selling these insecticides/fertilizers to the appellant by giving wrong advice. The appellant has suffered the loss to the tune of Rs. 10,000 per killa i. e. to the tune of Rs. 3,20,000. He has paid price of chemicals/fertilizers to the tune of Rs. 9,100. He has also suffered loss to the tune of Rs. 32,000 on account of watering, electricity, diesel, etc. Hence he filed the complaint for recovery of these amounts plus compensation and costs of litigation, etc. Respondent No. 1 filed written statement. Preliminary objections were pleaded and the case was also contested on merits. It was admitted that respondent No. 1 was the dealer and he sold goods in a sealed form. Respondent No. 1 had not tampered with the contents of insecticides/fertilizer. Therefore, the manufacturers alone were responsible. Moreover, the Assistant Development Officer in his report has clearly mentioned that the crops had withered because of shortage of water and not because of the use of the insecticides. The appellant himself had got published a news-item in the "daily Ajit" on 18. 7. 2002 to the affect that the crops were damaged due to low level of water and shortage of water. It was also alleged that the complaint has been filed by the appellant with mala fide intention, to harass the respondents and with an ulterior motive. Hence dismissal of the complaint was prayed.

4. RESPONDENT No. 2 also filed written reply. It was denied for want of knowledge if the appellant was an agriculturist and was resident of Village Enna Khera or if he had sown paddy crops in 32 killas of land. It was admitted that respondent No. 1 was carrying on the business of sale of insecticides and fertilizers at Malout. It was denied for want of knowledge if the appellant had

purchased insecticides from respondent No. 1 but it was admitted that respondent No. 2 was manufacturer of insecticides Anilophos 36 E. C. , weedicides and this insecticide was purchased by respondent No. 1 from the answering respondent. It was sold in a sealed one litre container. It was to be preserved under a proper temperature away from the sunshine. It was the duty of respondent No. 1 to keep the insecticides in a proper storage so as to avoid any deterioration of the insecticides in question. It was also made clear that Anilophos is meant to control growth of the grass, etc. in the field i. e. to weed out grass, etc. It was only to be sprayed in the field. The appellant had mixed Anilophos into two kinds of fertilizers and then sprayed the same in the field which was not permitted and this process was against the use of Anilophos. It was also admitted that on the complaint of the appellant the officials of the Agriculture Department visited the fields of the appellant on 22. 7. 2002 and it was found that the paddy crop was already ploughed. They had also reported that the crop had been damaged on account of bad water under the soil and on account on less rain. It was further reported that the paddy crop standing in the fields adjacent to the Dhani of the appellant were also damaged because of bad water under the soil and for want of water. The Agricultural Officer had also visited the fields of other persons nearby and a news-item was published in the newspaper that the crops were damaged because of natural calamities. Hence dismissal of the complaint was prayed. Respondent No. 3 also filed written reply. They also took the similar pleas. It was admitted that answering respondent No. 3 was the manufacturer of Ramban bio-organic manure and power plus bio stimulant. Ramban did not have any phototoxic effect to damage the crop. Ramban manure is based on organic matter to improve the soil health. Similarly power plus liquid is also a bio product based upon extract of plants origin and use for plant growth and there was no question of damage of crops. It was also pleaded that both the products manufactured by respondent No. 3 were to be preserved under proper temperature. It was clearly mentioned on the bottle of the Power Plus and also on the literature. It was the duty of respondent No. 1 and the duty of the user to keep the product in the proper storage so as to avoid deterioration. It was to be sprayed alone in the fields and not after mixing with the Alkali products. It was also pleaded that the Agricultural Development Officer had visited the fields of the appellant on 22. 7. 2002 and had reported that the crops of the appellant had withered because of bad quality of soil water and for want of rainy water. Hence dismissal of the complaint was prayed.

5. IN support of his case the appellant appeared as a witness and proved his affidavit Ex. C-1. He also proved documents Ex. C-2 to Ex. C-14. He was cross-examined. Smt. Hardeep Kaur, Mamber, Gram Panchayat, Enna Khera appeared and she proved her affidavit Ex. C-16. She also proved documents Ex. C-17 and Ex. C-18. Shri Gursatpal Singh also appeared and proved his affidavit Ex. C-15. On the other hand, respondent No. 1 appeared and proved his affidavit Ex. OP1. Ram Parkash, ADO, was examined as a witness who proved the application of the appellant as Ex. OP-2 and he also proved his report as Ex. OP-3. He also proved

documents as Ex. OP-5 and Ex. OP-6. Major Singh Brar, Chief Agriculture Officer, Mukstar has also appeared as a witness. Jalour Singh, ADO, Soil and Water Test Laboratory, Gidderbaha also appeared as a witness who proved his report Ex. OP-4. A. K. Singh had also appeared as witness on behalf of respondent No. 2 who proved his affidavit as Ex. OP-Y. Respondent No. 3 proved affidavit of R. K. Shukla as Ex. OP-3/a and he also proved documents OP-3/b to OP-3/c.

6. ON the basis of these documents, the learned District Forum vide impugned judgment dated 13. 6. 2003 accepted the complaint and passed the following operative order: "we have considered the rival contentions and we are of the considered view that the complainant succeeds in proving his complaint, thus, we accept the complaint, with a direction to the opposite party Nos. 1 and 3 to pay the complainant Rs. 3,20,000 on account of loss of crop and Rs. 27,000 which was paid by the complainant to the Gram Panchayat Village Enna Khera as "theka" and Rs. 9,100 as the cost of the products purchased by the complainant, and a consolidate compensation of Rs. 15,000 for mental tension and harassment and litigation expenses. The opposite party Nos. 1 and 3 are directed to comply orders within 45 days after receipt of copy of the order. Copies of the order are sent to the opposite parties free of cost and, File be consigned to the record room. " The appellant filed Appeal No. 1278 of 2003 against the impugned judgment dated 13. 6. 2003 for the increase in the amount of compensation from Rs. 15,000 to Rs. 75,000 and for the grant of Rs. 5,000 as litigation expenses. Respondent No. 1 filed Appeal No. 1322 of 2003 for setting aside the impugned judgment dated 13. 6. 2003. Similarly, respondent No. 3 filed Appeal No. 1401 of 2003 for setting aside the impugned judgment dated 13. 6. 2003.

The record has been perused and the submission has been considered.

7. THE appellant has alleged that his family owns 40 killas of land and he had taken 22 killas of land from the Village Panchayat on lease in the year 2002-2003 for a sum of Rs. 27,000. Out of this total land he had sown paddy crop in 32 killas of land. This fact has been denied for want of knowledge by the respondents. However, the appellant has proved the copy of the Jamabandi for the year 1998-99 as Ex. C-6 and the copy of Khasra Girdawari for Kharif 2002 as Ex. C-7. He has also proved the receipt issued by Surjit Kaur, Sarpanch of Gram Panchayat in token of having received the amount/lease money from Jaswinder Singh appellant as Ex. C-5. Affidavits Ex. C1, Ex. C-11, Ex. C-15 and Ex. C-16 have also been proved. Since this evidence has not been controverted by any evidence to the contrary it is taken to be correct. The appellant has alleged that his paddy crop had withered for which he had filed the complaint to the Assistant Plant Protection Officer, Malout. A copy of this application dated 19. 7. 2002 has been proved as Ex. OP-2 (also Ex. C-10) on the file. This application was also supported by his affidavit Ex. C-11. These documents were admitted by him in his statement recorded on 17. 4. 2003. It is stated in this application that he had purchased 10 bags of Ramban fertilizer from the shop of respondent No. 1 on 15. 6. 2002 and 10 bags of Ramban fertilizer on 19. 6. 2002. The appellant had used

Ramban fertilizer in his paddy crop fields sown in 32 acres and the paddy crop was damaged within one week. He also reported that the spot be inspected and the appellant had suffered a huge loss and he should be compensated. This was the first and immediate version of the appellant.

8. ON this application dated 19. 7. 2002 filed by the appellant before the Assistant Plant Protection Officer, Malout. Agricultural Development Officer visited the spot on 22. 7. 2002 i. e. within three days from the date of application. He reported in his report dated 22. 7. 2002 (Ex. OP-3) that on 22. 7. 2002 he went to the Dhani of Jaswinder Singh (appellant) son of Shri Gurmukh Singh and enquired about Jaswinder Singh. One household lady told him that Jaswinder Singh had gone to the town. Then the Agricultural Development Officer made inquiries from her as to the paddy crop of which field had been damaged because of the use of the fertilizer but she told him that the paddy crop had been ploughed. She also told that the crop was damaged because of bad quality of sub soil water and for want of rainy water. The residents of the adjoining fields also told him that the paddy crop had been damaged because of bad quality of sub soil water and for want of rainy water. In the last he went to Hardial Singh son of Surmukh Singh, ex-Sarpanch and saw his paddy fields and came to know that the paddy crops were damaged because of bad quality of sub soil water and for want of rainy water. This Development Officer was also accompanied by Joginder Singh, ADO. Accordingly he reported that since the crops were not there, it could not be verified if the paddy crops of Jaswinder Singh (appellant) had been damaged because of the use of Ramban fertilizer. This report was submitted by the Agricultural Officer, Virk Khera, Malout to the Assistant Plant Protection Officer who forwarded the same to the Joint Director, Agriculture (Input), Punjab, Chandigarh on 3. 8. 2002. He also agreed with the report of the Agricultural Development Officer. However, in the complaint filed on 18. 9. 2002 by the appellant he has come out with a new version that on the advice of respondent No. 1 he had mixed Ramban fertilizer, Power Plus and Agrianilo and then sprayed the same on the paddy crop which damaged the crops. This version of the appellant is not in consonance with the original complaint dated 19. 7. 2002. It appears therefore that the version in the complaint is a concocted version and is an afterthought. If this complaint contained true facts then he would have narrated those facts in the original application dated 19. 7. 2002 filed by him to the Assistant Plant Protection Officer, Malout (Ex. C-10 and Ex. OP-2). Secondly, once the appellant had filed an application on 19. 7. 2002 to the Assistant Plant Protection Officer and had invited him for spot inspection at least he should have kept the paddy crop un-ploughed for inspection purposes. Within three days the Agricultural Development Officer on the instruction of the Assistant Plant Protection Officer visited the spot and he was told that the crops were already ploughed. Therefore, the Agricultural Development Officer could not find out if the paddy crop of the appellant had been damaged because of the use of Ramban fertilizer as was alleged by the appellant in the application dated 19. 7. 2002 or because of the bad quality of sub-soil water and because of shortage of

rainy water as was told to the Agricultural Development Officer by the wife of the appellant or because of the use of mixture of Ramban, Power Plus, Agrianilo etc. as is the version of the appellant in this complaint. This factor also goes against the appellant.

9. THE Agricultural Development Officer has reported that the owners of adjoining fields had also reported that their crops were also damaged because of the bad quality of sub soil water and for want of rainy water. If the crops of the adjoining fields had withered for this reason it becomes unbelievable if the paddy crops of the appellant had not withered for the same reason which was responsible for damaging the crops of the adjoining fields. Moreover, the appellant himself contradicted his version contained in the application dated 19. 7. 2002 and has introduced a new version in the complaint. Therefore, it makes more probable that the paddy crop of the appellant was also damaged because of bad quality of sub soil water and for want of rainy water. It appears that the appellant has made out two different stories at two different times to claim compensation.

10. THE submission of the learned Counsel for the appellant was that at the instance of the appellant, the sample of power plus and the sample of agrianilo were sealed and sent to the chemical laboratory of analysis. The analysis report of Power Plus Fertilizer was received from the Central Fertilizer Quality Control and Training Institute, Government of India, Faridabad dated 25. 10. 2002 (Ex. C-13) which reported that the sample of power plus was non-standard. Similarly the report of agrianilo sample was received from Senior Analyst, Insecticide Testing Lab. , Bathinda dated 24. 12. 2002 (Ex. C-14) according to which the active ingredient contents found in the product were 26. 98% EC instead of 30% EC which was represented by the manufacturer. Hence it was submitted that respondent No. 3 (appellant in Appeal No. 1401 of 2003) has been rightly burdened with the amount of compensation along with respondent No. 1 (appellant in Appeal No. 1322 of 2003). It was also prayed that the amount of compensation be enhanced. This submission has been considered.

The original complaint of the appellant was that use of Ramban fertilizer had damaged the crops of the appellant but sample of Ramban was not sent to any laboratory. Even otherwise in the present complaint the appellant had alleged that on the advice of respondent No. 1 he had mixed the weedicides with the fertilizer and then had used the mixture on his paddy crop which damaged his crops. It means, therefore, that even Ramban was mixed with the other weedicides/fertilizer. If the appellant had sent the samples of power plus and agrianilo then he should have also sent the sample of Ramban fertilizer to the Lab. so that the quality of Ramban could also have been analysed and assessed. There is also no report on the file if the mixing of these weedicides with the fertilizers could have damaged the paddy crops.

11. IN other words, neither Ramban fertilizer has been got tested by the appellant against which he had not complained originally nor he had got tested

the mixture of all these chemicals if these were liable to damage his crop. Learned District Forum vide impugned order dated 13. 6. 2003 has exempted the manufacturer of agrianilo, namely, respondent No. 2.

12. SO far as the analysis report of fertilizer sample of Power Plus (Ex. C-13) is concerned the respondents had taken the plea in the written statement that these sealed packets were required to be kept in particular temperature and were to be kept away from sunshine failing which these were likely to lose its strength. There is no evidence on the file if these instructions of respondent No. 2 were followed either by respondent No. 1 or by the appellant himself before sending the sample to the chemical laboratory. Moreover, the appellant has admitted in his cross-examination that he had kept the weedicides/fertilizers in his room. The light was entering the room where he had placed the insecticides/fertilizers. Therefore, it might be possible that because the power plus and agrianilo were not kept in proper temperature away from the sunshine which reduced the strength of these insecticides/weedicides/fertilizers. Moreover, it was reported in the newspapers, copies of which have been placed on the file as Mark-A and Mark-B that the crops in that area were damaged because of natural calamities. It is not reported anywhere if the crops were damaged because of the use of insecticides/weedicides/fertilizer. From all these circumstances, we reach the conclusion that the learned District Forum has totally misread the evidence. The report of the Agricultural Development Officer which is unbiased, impartial and immediate evidence has been disbelieved on the basis of conjectures. If the crops of the appellant had been damaged because of the use of Ramban Fertilizer then he would not have ploughed his fields and would have kept the crops standing for inspection of the Assistant Plant Protection Officer or his associates. The mere fact that the appellant has changed his version also makes him unbelievable.

13. IN view of the discussion held above, appeal filed by the appellant i. e. Appeal No. 1278 of 2003 is dismissed and the appeals filed by respondent No. 1 bearing Appeal No. 1322 of 2003 and by respondent No. 3 bearing Appeal No. 1401 of 2003 are accepted and the impugned judgment dated 13. 6. 2003 is set aside. In the result, the complaint stands dismissed.

14. THE arguments were heard in this case on 29. 4. 2008 and the orders were reserved. Now, the order be communicated to the parties. The appeal could not be decided within the statutory period due to heavy pendency and in view of non-availability of the requisite Benches and infrastructure, which are yet to be provided to the State Commission ordered accordingly.