

(2011) 11 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

Kuldip Singh

APPELLANT

Vs

Northern Minerals Ltd

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Citation : 2012 1 CPJ 189

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : Appeal dismissed.

Judgement

1. THIS appeal is against the order of the State Consumer Disputes Redressal Commission, UT of Chandigarh on 4.9.2006. The matter was originally listed as CC No. 28 of 2002, which was transferred to UT State Commission and decided as RBT No. 14 of 2006. The complaint of the appellant has been dismissed in the impugned order.

2. RESPONDENT Nos. 1 to 4 (OP Nos. 1 to 4 before the State Commission) are various functionaries of the Northern Minerals Ltd. and respondent No. 5 (OP No. 5) was a dealer of Northern Minerals Ltd. in Kapurthala, Punjab. The two Complainants Kuldip Singh and Surender Singh have jointly filed this appeal.

3. THE case of the Complainants before the State Commission was that they had purchased a fungicide namely, carboxin 75% (vitavax) in October, 2000 and had applied it, following prescribed instructions for use, to their potato crops in about 100 acres. They got a yield of 15,000 bags. But, the whole crop was affected by black spots (Rhizoctonia). Due to this infestation they had to sell the harvested potatoes at Rs. 100 per bag, while prevailing market was 400 per bag. In the process they allegedly suffered a loss of about Rs. 45 lakh.

4. THE above claim was opposed by respondent Nos. 1 to 4, on the following grounds: (a) this fungicide is recommended only for wheat, barley and cotton crops and not for any other crops; (b) a crop of this magnitude was raised only to make huge profits in the market. Therefore, use of vitavax was purely for commercial purpose. (c) The product cannot be declared substandard without

being tested by an appropriate laboratory. No such test was done in this case. (d) For control of disease of Rhizoctonia (black spots) integrated crop management is required. The Complainants had not shown what measure were adopted by them.

5. THE State Commission has observed that the Complainants claimed to have purchased 60 kilo grams of vitavax from OP-5, the dealer of the OP Company in Kapurthala. According to the affidavit of OP-5, the Complainants informed him when the potato crop was affected by black spots. He therefore, made the representatives of the company visit their farms who found that Rhizoctonia had fully affected the potato crop. The State Commission has observed that the concerned employees of the company have challenged this statement of OP-5 in their affidavits. According to them, they had paid routine visits to various villages but never recommended the vitavax for potato crop.

6. THE conclusions reached by the State Commission are: (a) even where the pamphlet includes potato in the list of recommended crops, it does not say that it is recommended for removal of black spots on potato crop. (b) the Complainants did not make any effort to get the samples of the product in question analyzed by an appropriate laboratory to determine its quality. Therefore, the State Commission held that there was no deficiency on the part of the respondent.

7. DURING the course of the consideration of this appeal, we have called for the records of the State Commission and perused them. Counsel for the two parties have also been heard. It was argued by the appellant Counsel that batch numbers of the various packets purchased by them have been communicated to the OPs. in their letter of 20.9.2001. We find that this was done five months after their legal notice of 24.8.2001 to the OPs. This also need to be seen in the background of the fact that the products of these batch numbers had limited shelf life, expiring within the next few months of their legal notice. We do not find any explanation as to what was sought to be achieved, by communicating the batch numbers on 20.9.2001 when the shelf life had already expired in relation to about half the quantity allegedly used by the complainants. Secondly, the failure to get the product analyzed through a laboratory was a direct violation of the requirement laid down in Section 13 of the Consumer Protection Act, 1986. It entailed fatal consequences for the claim of the Complainants as to the effect of the product on their crop.

8. THE Complainants have heavily relied upon the affidavit of OP-5, the dealer of the respondents-company. As already observed, a part of the averments in his affidavit, relating to the visit of some of the representatives of the respondents company and their interaction with the Complainants, has been challenged in the affidavit evidence of those representatives. Yet, the Complainants have not examined any of them before the State Commission, so as to establish the relative truth of their averments.

9. THE records do not show that this product had earlier been used by the

Complainants, as a fungicide for potato crop. It is not the case of the Complainants that they had used this product earlier, but it had failed only this time. The complaint petition mentions demonstration at their farm by the OPs but with no details. In the background of the negative stand of the OPs, the complaint petition should have carried all details of the alleged demonstration like year of demonstration, area of the demonstration plot, crop practice followed, periodic monitoring of the crop growth and measure of incremental yield. Without all this, it is strange that the Complainants chose to use the product in question over a 100 acres crop.

10. OPS have also alleged that no bill were produced in support of the claim to have purchased 60 kgs. of Vitavax by the complainants. In this context, learned Counsel for the respondents drew our attention to the proceedings of 29.8.2006 in which the Commission has noted as follows: "The learned Counsel for the complainant states that the complainant does not possess any bills for the purchase of medicine Vitavax and does not want to lead any further evidence. Further arguments heard. For orders to come up on 4.9.2006."

11. FOR the reasons detailed above, we do not find any merit in this appeal. The same is dismissed with no order as to costs. Appeal dismissed.