

**(2009) 04 NCDRC CK 0043**

**In the National Consumer Disputes Redressal Commission**

Mahyco Monsanto Bio Tech (I) Ltd. And Anr.

APPELLANT

Vs

Bodduluri Jeevan Kumar And Anr.

RESPONDENT

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**Date of Decision :** 22-04-2009

**Acts Referred:**

**Citation :** 2009 0 NCDRC 46 : 2009 3 UC 1636

**Hon'ble Judges :** R.K.BATTA J.

**Final Decision :** Petition dismissed

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**Judgement**

1. THE complainants had filed separate complaints but their grievances are identical. We shall narrate facts in the case of Bodduluri Jeevan Kumar v. Mahyco Monsanto Bio Tech (India Ltd.) & 3 Others (Complaint Case No. 65 of 2005). The complainants are small farmers and cultivate cotton crop. The 1st opposite party is manufacturer of seeds; the 2nd opposite party is Area Sales Manager of the 1st opposite party; the 3rd opposite party is Managing Partner of Srinivas Traders; and the 4th opposite party is Joint Director of Agriculture. The opposite party Nos. 1 to 3 had visited the village of the complainant several times before the beginning of the agricultural season 2004 -05 and widely publicized MECH -12 BT, variety cotton and assured that it will give a record yield ranging from 15 to 20 quintals per acre. The complainants were lured by the propaganda and purchased MECH -12 BT variety cotton seed of 450 gms. tin by paying price of Rs. 1600 on 30.6.2004. The Lot number of the said seed was BT 108551 and for non -BT of 120 gms 100665 and the number of the seed container is 898511. These details are" in respect of seed purchased by one of the complainants. The details in respect of the other complainants are similar. The complainant sowed cotton seeds on 15.7.2004 in one acre of land after properly tilling with adequate space between each plant under the guidelines of Agricultural Department. The complainant had also sown non -BT seed to form a defence ring to actual BT seed, as suggested by the opposite parties. The complainant managed the crop under the guidelines of Agricultural Officer of Edlapadu Mandal. The climatic conditions were suitable for cotton crop. However, the yield was not as expected as the seeds were inferior in gene quality. The yield was only to the extent of 3

quintal per acre. Even at the initial stage of germination, complainant had to sow repeatedly to fill up gaps in the plant population by purchasing extra seeds. The crop failed at the flowering stage and after flowering, the plants shed down the flowers and also the fruits. The defect continued till the end of the crop but despite repeated requests from complainants, opposite parties did not visit the field of the complainants. The complainants had lodged complaint with the Agricultural Office, Edlapadu. A team from Agriculture Office, Edlapadu visited the field, inspected the plantation and orally informed that the failure of the crop was due to the seed. The complainants also alleged that there was wide -spread failure of crop on account of sowing of MECH 12 BT variety cotton and there were agitations. In these circumstances, the complainants sought compensation of actual loss suffered, compensation for mental and physical suffering and costs.

2. THE opposite party No. 1 took various preliminary objections including that the complaint was not maintainable; that District Consumer Forum had no jurisdiction to entertain the complaint; that the complaints were not consumer; that the seeds were purchased for commercial activity and that the Consumer Protection Act, 1986 was not applicable since the Seeds Act, 1996 and Seeds Rules, 1968 were applicable. The opposite party No. 1 denied each and every averment made by the complainant in copy book style and -we shall deal with this aspect while dealing with the matter on merits. According to the opposite party No. 1, the crop did not fail due to quality of seed but it was due to other (sic) for which, the liability cannot be fastened on the opposite parties. It was further contended that the complainants themselves are responsible due to their own negligence as they had not followed proper agricultural practices and had also not taken proper plant protection and the complainants had also not followed the instructions and directions properly. According to the Respondents, the actual yield was more than 3 quintals per acre. It was also stated that the complainants had sown the seed on 15.7.2004, which means that the sowing was delayed and the seed was not sown in proper season, which may affect the yield. It was further stated that there was very heavy rainfall which was followed by severe stress at the time of flowering and boll -formation; the complainant's land is not fit/suitable for this crop; complainants failed to give required irrigation from the period of flowering and boll -formation and, as such, the flower shedding occurred due to stress of water in critical stages of crop. The opposite parties relied upon test report dated 2.6.2004 of Quality Control Lab of the opposite party No. 1. It was also contended by the opposite party No. 1 that the matter could not be disposed of in summary nature by Consumer Forum; that the proper jurisdiction to try the matter was Civil Court; the complaints involved determination of complicated questions of disputed facts and the complaint was filed without any expert's report as documentary proof/evidence to ascertain that the seeds were defective. The District Forum on analysis of evidence and documents placed before it came to the conclusion that although the seeds germinated, there had been falling of flowers, buds/fruits resulting in very low yields averaging between 2 and 3.5 quintals as against the expected yield of 15

to 20 quintals promised by the opposite parties. The Mandal Agricultural Officer, Kakumanu of Counter District (a neighbouring Mandal of Edlapadu) had inspected the village on 12.11.2004 and observed that flower shedding and bolls are less compared to other varieties. The District Forum relied upon Exb. A -18 which is a certificate from Surpanch of Jaggapuram Gram Panchayath certifying the extent sown by each of the complainants with the cotton seed MECH -12 BT supplied by opposite parties 1 to 3. The District Forum also relied upon Exb. All to A17, which are Kata Receipts indicating that the product of complainants had been weighed which was between 2 and 3.5 quintals. The District Forum took note of aggressive marketing and publicity techniques in promotion of the product and marketing related activities as also that the seeds marketed by the opposite parties were very costly inasmuch as normal seeds cost Rs. 300 to Rs. 400 for the same quantity, the seeds sold by the opposite parties are almost 4 to 5 times higher in cost. The District Forum pointed out that the academic conclusion of the MOU Committee that the seeds were genetically pure and deviation in possible yields was not due to genetic purity but due to other factors and based on the status of the crop, the expected yields could be 6.45 quintals per acre, but the actual yields ranged between 2 and 3.5 quintals per acre.

3. DISTRICT Forum came to the conclusion that the complainant had purchased the seeds on account of propaganda techniques of opposite party Nos. 1 to 3, sown and found that the yield was very low. The laboratory reports produced by opposite party Nos. 1 to 3 were one -sided and not based on local conditions. Relying upon judgment of the Apex Court in *M/s. Maharashtra Hybrid Seeds Company v. Alavalapati Chandra Reddy and Ors.*, III (1998) CPJ 8 (SC);, 1999 (1) CPR 1 (SC), it has been pointed out that when the opposite parties did not adduce any material to show that the complainants did not manure properly or that there was some defect in the field and the opposite parties did not visit the fields, the arguments put forward by the opposite parties that the complainants had not followed the directions and instructions could not be accepted. The District Forum, therefore, directed opposite party Nos. 1 to 3 to jointly and severally pay compensation of Rs. 10,000, in each case, though the actual loss was stated to be much more, with 9% interest per annum from the date of complaint till the date of actual payment as well as cost of Rs. 1,000. The order of the District Forum was challenged before the State Commission. The State Commission vide common order dismissed the appeals. The State Commission held that the contention of the opposite parties that the complainant did not adhere to proper crop management practices as a result of which the crop had failed was not supported by any documentary evidence. In this connection reliance was placed on the judgment in *M/s. Maharashtra Hybrid Seeds Company v. Alavalapati Chandra Reddy and Ors.* (supra) which applied to the facts of the matter under consideration. The State Commission also found that the contention of the opposite parties that the complainant had not adhered to Section 13(1)(c) of the Consumer Protection Act wherein seeds were not sent for testing was not sustainable in view of the judgment of the Apex Court in *Mahyco*

v. Alavalapati Chandra Reddy and Ors., VIII (1998) SLT 311: 111, (1998) CPJ 8 (SC), wherein it was stated that the complainant had sown all the seeds purchased by them and they would not be in a position to send the seeds for analysis, but the opposite parties have not chosen to file any application for sending the seeds to any laboratory. The State Commission also relied upon the judgment of National Commission in National Seeds Corporation Ltd, v. M. Madhusudhan Reddy,, 2004 CPJ 122 (SC), wherein it was observed that a farmer is not expected to conserve certain portion of seeds and therefore cannot produce these seeds from somewhere to get them tested to meet the requirements of Section 13(1)(c). The State Commission took note of the District Level MOU Committee Report relied by the opposite parties in which it was stated that this expected yield was at least 6.45 quintals per acre but the actual yield was 2 to 3.5 quintals per acre. Reliance was also placed on the certificate of the Sarpanch, Jaggapuram Gram Panchayat, Edalapadu Mandal (Exb. A -18) wherein it was certified that the representatives of opposite parties gave wide publicity stating that there would be 15 -20 quintals of yield per acre. Having believed the assurance of the opposite parties several farmers of the village purchased and sowed the MECH 12 -BT cotton variety (sic)eed and incurred huge losses due to failure of the crop in the flowering stage itself. It was also observed that laboratory report relied upon by the opposite parties were self -serving. The appeals were accordingly dismissed.

4. THE said order of the State Commission has been challenged in revisions before this Commission. Arguments in revisions were heard and the revisions are being disposed of by a common order. Learned Counsel for the Petitioner argued before us that the only ground taken by the complainants in the complaint was that the seed was of inferior quality as a result of which the production was only to the tune of 3 to 4 quintal per acre. In this connection, our attention was drawn to the letter of Mandal Agricultural Officer, Bakaumanu, Guntur Distt. to Joint Director of Agriculture, Guntur wherein it was stated that a team may be constituted to assess the performance of the BT cotton of seed produced by the Monsanto India Ltd. According to the Learned Counsel for the Petitioner, consequent to this request, MOU Committee was constituted which inspected the crop on 3.12.2004 and gave the following finding: (i) The crop is genetically pure, (ii) The deviation in yield is due to factors other than the genetic purity. (iii) The expected yield as noted by MOU Committee is 6.45 quintals per acre.

5. THUS , it is clear from the said report that the low yield was not on account of genetic impurity of the seed but due to other factors. Learned Counsel for the Petitioner drew our attention to Mahyco Grow Out Test and submitted that the genetic purity was 100% in respect of cotton MECH12 (M) HY -UNP and in respect of BT12 MECH 12 (M) HY -CLEANED purchased by the complainants the purity of the seeds was 99.91%. He further submitted that in order to have best results, optimum conditions are necessary. The complainants did not adhere to the proper crop management practices due to which the crop failed. It was also

stated that the crop was sown late. He also drew our attention to the crop management practices for Bollgard MECH -12 BT, which is at pages 5 and 6 in Volume II of the record. According to the Learned Counsel for the Petitioner, the complainant had failed to prove any defect in the seeds and had failed to prove actual loss to them but, the Fora below ordered compensation though the actual loss had not been proved. According to the Learned Counsel for the Petitioner actual loss is sign qua non for granting compensation. Learned Counsel for the Petitioner pointed out that the Fora below were wrong in rejecting MOU Committee Report, Grow Out Test Reports and that it was the responsibility of the complainant to have asked for test under Section 13(1 )(c) of the Act. Learned Counsel for the Petitioner placed reliance on a number of Rulings. Reliance was placed on Indo -American Hybrid Seeds and Anr. v. Vijaykumar Shankarrao and Ors., II (2007) CPJ 148 (NC), in support of his submission that there was no word in the report about the inferior quality of the seeds and variation in the yield was on account of external considerations like climate, pesticides, etc. Reliance was then placed on the judgment of Maharashtra Hybrid Seeds Company Ltd. v. Gowri Peddanna and Ors., I (2007) CPJ 266 (.NC), wherein Testing Laboratory Report from independent agency which supported the case of the Petitioner/ opposite party that seed was of 99.6% was taken into consideration while holding that there was no deficiency in service. Reliance was next placed on judgment of the Apex Court in Haryana Seeds Development Corpn. Ltd v. Sadhu and Anr., II (2005) SLT 569: 11, (2005) CPJ 13 (SC), wherein District Forum had placed reliance on the report of Agriculture Officer and Agriculture Development Officer in which it was stated that germination of the seeds was very poor resulting in low yield of crop as a result of which the complainant had suffered loss. The Apex Court found that Haryana Seeds Development Corporation had constituted an Expert Committee, which inspected the seeds sold to farmers and conducted inspection after which detailed report was submitted stating that the crop condition varied from " satisfactory to excellent" and the reason for variation was other than the quality of seeds. The Committee had stated that: Hence the variation in the condition of crop in the same lot of seed at different fields may not be attributed to quality of seed but the other factors including high salt concentration, brackish water, moisture content at the sowing time, sowing method and soil physical conditions, which also play a major role in germination of seed and crop stand.

In the operative part, the Committee concluded:

It may be concluded that variation in the condition of the crop may not be attributed to the quality of seed but it may be due to other factors including water quality used for irrigations, long dry spell, salt accumulation in surface layer, sowing methodology, moisture content at the sowing time and soil physical condition.

The said report of the Committee was accepted and the order of the District Forum, which was confirmed by the State Commission and National Commission

was set aside.

6. RELIANCE was also placed on judgment of this Commission in *Hindustan Insecticides Ltd. v. Kopolu Sambasiva Rao and Ors.*, N, (2005) CPJ 47 (NC). In this case, it was held that the Complainant should have produced the sample before the District Forum for getting it analysed or as was advised by the Diagnostic Team of the Andhra Pradesh Agricultural University. Samples should have been got drawn from the material with the complainant and got it tested. It was further held that it was for the complainants or their Advocates or for the District Forum to take appropriate steps as per the provisions of Section 13(1) (c) of the Act, which was not done. Therefore, there was no reason to discard the report submitted by the Quality Control Inspector. Reliance was also placed on the judgment of this Commission in *Soanekaran Gladioli Growers v. Babu Ram*, II (2005) CPJ 94 (NC). Lastly, the Counsel for the Petitioner placed reliance on the judgment of this Commission in *Maharashtra Hybrid Seeds Company Ltd. v. Shri Parchuri Narayana*, I (2009) CPJ 180 (NC), R.P. No. 433 of 2005 decided on 6.1.2009. In this case, the complainant had purchased Hybrid Jowar Seeds under the brand name of Mahyco Jowar MSH -51 model seeds and as per manual (Ex. B -2) supplied by the Petitioner, the expected yield was 80 quintals per hectare whereas the actual yield produced was less than 5 quintals per hectare. It was alleged that failure of crop was due to low yielding and defective seeds supplied. The District Forum had allowed the complaint holding that the seeds were defective and for coming to the said conclusion reliance was placed on the report of Agriculture Officer and Advocate Commissioner appointed by District Forum. Appeal before the State Commission was dismissed. The State Commission also relied upon the reports of Agricultural Officer and Advocate Commissioner. Before National Commission, it was submitted that the Report of the Advocate Commissioner as well as Agriculture Officer did not prove that low yield was due to defective seed. The Petitioner therein had produced copy of the Test Report carried out by the Assistant Director, Agriculture, Government of Andhra Pradesh, Hyderabad showing 99.9% purity and 85% germination of the seeds. The samples were collected from the same lot and brand taken from the dealer, which, were sold to the complainant. It was observed that the question regarding quality of seeds produced by the Petitioner ought to have been determined following the procedure contemplated under Section 13(1)(c) of the Act. Relying upon the report submitted by the Assistant Director of Agriculture, it was held that the seeds supplied were not defective.

7. FINALLY , Counsel for the Petitioner submitted that in para 5 of the written arguments Complainants have themselves submitted that the finding of District Level MOU Committee has no relevance as the claim is neither on genetical impurity nor germination failure.

8. COUNSEL for the Respondent submitted before us that all seeds purchased by the Complainants had been sown and it was for the opposite party Nos. 1 to 3 to send the seeds from the same lot to the Laboratory for testing in terms of

Section 13(1)(c) of the Act. Our attention was drawn to judgment of this Commission in *National Seeds Corpn. Ltd. v. P.V. Krishna Reddy*, I (2009) CPJ 99 (NC). In this case, the complainant had alleged that at the time of purchase of seeds, complainant was assured of 80% germination by the Petitioner Corporation and yield of 30 quintals per acre. The complainant had informed the opposite parties' officials about the disappointing state of the crops but there was no response. The complainant had also informed the Agriculture Officer at Mandal and District Level. The field was inspected by horticulturists who informed that the crop was defective and this could result in decreased yield. The Fora below took note of the certificate issued by the Sarpanch of the village certifying that the complainant had proper irrigation and drainage facilities for his 10 acres of land. Reliance was also placed on the report of Assistant Director of Horticulture, Guntoor, which clearly assessed the loss of about 70 -75% of yield. The Forums also found that the Petitioner did not bring on record any documentary evidence to support its claim that the complainant did not follow proper crop management practice and proceeded to grant compensation of Rs. 50,000 towards loss of crop with cost of seeds of Rs. 3,375 plus Rs. 10,000 as costs for mental agony. It was also noted that the objection taken by the Petitioner that the complainant should have sent the seeds to laboratory by invoking Section 13(1)(c) of the Act was rejected by the Fora below on the ground that the Petitioner itself could have applied for analyse of seeds if they so desired and the farmer is not expected to conserve certain portion of seeds for the future possibilities of any such analysis. Some -other issues, which have also been raised in the petition before us, have also been dealt with in this judgment and we shall" refer the same at a later stage. Learned Counsel for the Respondent has urged that opposite parties had given wide propaganda that the yield from MECH 12 BT cotton seed would be ranging between 15 and 20 Qtls. per acre but ultimately the yield was only around 3 quintals per acre and even MOU Committee had stated that the expected yield is 6.40 quintals per acre. Therefore, in the facts and circumstances of the case meagre compensation of Rs. 10,000 granted to the complainant does not call for any interference in exercise of revisional jurisdiction of this Commission.

The Petitioner had raised a number of preliminary objections. The first preliminary objection taken by the Petitioner is that the complainant is not a consumer and the cotton seed was purchased to grow cotton crop which is sold in marked tins which amounts to commercial activity. The complainants in all these petitions are small agriculturists, who live on agriculture and earn their livelihood therefrom. The cotton seeds were purchased by them from opposite party No. 3 as a result of which, the complainants are certainly consumers within the definition of Section 2(d)(1) of the Act. This aspect has been extensively dealt with by this Commission in *National Seeds Corpn. Ltd. v. P.V. Krishna Reddy* (supra) and we need not dwell the same issue again as we respectfully agree with the view taken therein.

9. THE next objection raised by the Petitioners is that the matter involves de -

termination of complicated questions of law and disputed facts, which should not be decided in summary manner and the same are required to be dealt with after elaborate trial in Civil Court. We also do not find any merit in this submission. The Apex Court in a series of judgments has laid down guidelines and general principles on the issue and applying the principles laid down in the cases of Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi,, IV (2002) SLT 714: 111, (2002) CPJ 8 (SC), CCI Chambers Co -op. Hsg. Society Ltd. v. Development Credit Bank Ltd., v., (2003) SLT 185: 111, (2003) CPJ 9 (SC) and in Punj Lloyd Ltd. v. Corporate Risks India Pvt. Ltd.,, 1 (2009) SLT 278:, 1 (2009) CPJ 10 (SC), we find that by no stretch of imagination it can be said that any complicated questions of law or disputed question of facts arise which cannot be decided by Consumer Fora. Consumer Fora are competent to deal with such issues.

10. ANOTHER objection raised by the Petitioner is that Consumer Protection Act, 1986 is not applicable to the present case as the Seeds Act, 1966 and the Seeds Rules, 1968 are applicable and in this connection, it has been submitted that Apex Court in National Seeds Corpn. Ltd. v. M. Madusudan Reddy,, I (2004) CPJ 122 (NC)=Civil Appeal No. 10813/03 has granted special leave on the question where the provisions of Seeds Act, 1966 over ride the provisions of Consumer Protection Act, In fact, this issue has been dealt with by this Commission in National Seeds Corpn. Ltd. v. P. v. Krishna Reddy (supra). In the said case, it has been held that the issue has been concluded by judgment in National Seeds Corpn. Ltd. v. M. Madusudan Reddy (supra), wherein it was contended that the Seeds Act, 1966 was special Act and would prevail over the general Act. This contention was rejected on the ground that Seeds Act, 1966 is completely silent on the situation where a farmer has purchased seeds from an authorized dealer which failed to give desired results. It was further held that the Seeds Act did not deal with the pathos of the farmer, who has invested money, time and resources to get fruits but failed to get it on account of poor quality / defective seeds. Besides that, it was also held therein that Consumer Protection Act, 1986 is a Special Act having additional/ extended jurisdiction, inasmuch as Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar. There are a number of Apex Court's pronouncements on this aspect that the remedy provided under Section 3 of the Act is in addition to and not derogation of provisions of any other law for the time being in force. At this stage, we would also like to point out that written statement in defence filed by the opposite party No. 1 is in copy book style. In books dealing with the cross -examinations, Illustrations are given as to how defence is prepared. For instance a person is charged for breaking a windowpane in a building. The defences to be taken could be: the building in question did not exist; if the building existed it had no window; if the window was there, there was no glass pane; if there was glass pane it was already broken; if glass pane was broken, it was broken by someone else and the persons charged did not break the same and lastly there was no intention on the part of the person charged to break the window pane as he had thrown stone to hit a bird and



accidentally it struck against window pane and so on. The opposite party No. 1 has exactly followed this copy book strategy in the written statement. After taking a number of preliminary objections, the opposite party No, 1 denied everything in toto. It was denied that the complainant was a small farmer living on agriculture; it was denied that the complainant had cultivated cotton with MECH -12 BT variety seed manufactured and supplied by opposite party Nos. 1 and 3; wide publicity in village with regard to MECH -12 BT and assurances as to yield were denied; even purchase of MECH -12 BT variety seed by paying Rs. 1600 vide receipt No. 54/70 under Lot No. BT 10855 for non -BT of 120 gms 100665 as also the number of seed container being 898511 was denied. We need not illustrate further as the entire written statement is a total denial of everything. The case of the complainant is that the opposite parties never visited the field and it is not the case of opposite parties that they had in fact visited the fields and as such it is not understood as to how the opposite party No. 1 in the written statement made denial statements in paragraphs 10, 11,12 and 24 of the written statement. The written statement was verified by opposite party No. 1 as true and correct to best of knowledge and belief. The verification of paragraphs 9 to 12 and 24 obviously could not be on the basis of personal knowledge and source of information and knowledge from other sources has not been disclosed.

11. LEARNED Counsel for the Petitioner urged before us that only ground taken in the complaint is relating to seed being inferior in gene quality. In our opinion, this is not the only ground taken, inasmuch as the case of the complainant is that wide publicity was given with regard to MECH 12 BT variety cotton and it was assured that the same will give record yield ranging between 15 and 20 quintals per acre.. The complainants were lured by the propaganda of opposite party Nos. 1 to 3 and had purchased the seeds of MECH 12 BT variety cotton by paying Rs. 1,600, whereas the other seeds were available at a much cheaper rate. The grievance of the complainant is that in spite of the said assurances and wide publicity, the yield was between 2 and 3.5 quintal per acre on account of which they had suffered losses.

12. THE case of the complainant is that they had sown the cotton seeds on 15.7.2004 in proper lining with adequate space between each plant under the guidelines of Agriculture Department and the crop management was done under the guidelines of Agriculture Officer, Edlapadu Mandal. According to the complainants after flowering, the plants shed down the flowers and also the fruits and this continued till the end of the crop season, but the opposite party despite repeated requests did not choose to visit fields of the complainants. It is not the case of the opposite party that they had visited the fields. In such eventuality it is not understood as to how the opposite parties denied that in the year 2004 -05, the complainant cultivated cotton with MECH -12 BT variety seeds manufactured /supplied by the opposite parties. How could the opposite party deny that the complainants had not prepared their land by tilling perfectly, had not sown cotton seed on 15.7.2004 in proper lining with adequate space between each plant under the guidelines of the agricultural department. There are similar

denials also in paragraphs 9 to 12 and 24 and it is not known on what basis the opposite party Nos. 1 to 3 have made the said denials. In para 18 of the written statement by opposite party No. 1 it is stated that complainants had not followed proper agricultural practices and had also not taken proper plant protection measures and had not followed directions and instructions properly. It is not understood that on what basis this statement has been made by opposite party No. 1 in written statement. Likewise, in para 24 it was stated that the complainants failed to give required irrigation during the period of flowering and boll -formation due to which flower shedding had occurred due to stress of water in critical stages of crop. On what basis the said statement was made, is not understandable. The Petitioners have thus taken the stand for the sake of defence only without there being any material in support of the same. Be that as it may, we shall now deal with other aspect of the matter. Mandal Agricultural Officer, Bakumanu, Guntur Distt. had written to Joint Director of Agriculture, Guntur with reference to representations of farmers of Kommur Village dated 11.11.2004 that he had visited the cotton crop on 12.11.2004 and he observed that flower shedding is observed and the bolls are less when compared to the other varieties. This is first hand information from Mandal Agricultural Officer to the Joint Director of Agriculture for which he had also requested for constitution of a team to assess the performance of BT 12 cotton of seed produced by Mahyco Monsanto Bio Tech (I) Ltd. For verification of complaints, a District level MOU Committee was constituted consisting of Joint Director of Agriculture or his nominee, Scientist nominated Member by ANGRAU, Representative of Member: Seed Men Association, Representative of Member Farmers, Representative of the aggrieved seed producer and Representative of the aggrieved farmer or complainant farmer himself. The MOU Committee inspected the crop on 8.12.2004 and furnished findings as under: 1. The crop is genetically pure;

2. The deviation in yield is due to factors other than the genetic purity; and
3. The expected yield as noted by MOU Committee is 6.45 quintals per acre.

No reasons on which the above findings were arrived at were given, nor any details of tests conducted for determination of the crop genetic purity or the deviation in yield was due to factors other than genetic purity were specified. At any rate it was stated by the said Committee that the expected yield as noted by MOU Committee was 6.45 quintals per acre but the actual yield was only in the range between 2 and 3.5 acres. The actual yield has been estimated on the basis of Kanta reports produced by the complainants which means that yield was less than half of what was even expected by the MOU Committee. This Commission had directed the Petitioners on 13.9.2007 to produce brochure issued by the Petitioner. However, the Petitioner did not produce the brochure but had only produced Group Management Practices for Bollguard, MECH -12 BT. It is a matter of common knowledge that when a new product is launched, aggressive marketing techniques are adopted and wide publicity is given to the product especially relating to the results which in this case would be the yield from MECH

-12 BT variety cotton seed. The complainants have spoken of the same and the case of the complainant is supported by the Sarpanch, Jaggapuram Gram Panchayath, Edalapadu Mandal vide certificate dated 10.12.2005, wherein it is stated that the representatives of the Company held public meetings and assured that this variety is costlier than other BT varieties as it gives yield ranging between 15 and 20 quintals per acre. It is also stated there. (sic) that believing on the publicity and assurance of the above company representatives, several farmers in the village had purchased and sown this variety but they had incurred huge losses due to failure of crop at the flowering stage itself. It is further stated in Exb. A -18 that Mahyco Monsanto Bio Tech (I) Ltd. gave wide publicity in the village in the month of May and June, 2004 with regard to its project MECH -12 BT cotton seed. There is absolutely no reason for us not to believe what is said by the Sarpanch in Ex. A -18. The Petitioner did not produce the brochure which would give the expected yield from the seeds and in spite of directions of this Commission and the said information has been withheld by the opposite party Nos. 1 to 3 for the reasons best known to them as a result of which, adverse inference has to be drawn that if the brochure had been produced it would have adversely affected the case of the Petitioner. Thus, the actual yield was about only 20% of what was assured by the Petitioner -Company through its representatives during the visit campaign and it was even less than what was even expected by MOU Committee. The Complainant had purchased MECH -12 BT cotton seed in view of the publicity and assurances. There is, thus, clear case of deficiency in service for which the complainants would be entitled to compensation.

13. IN the National Seeds Corpn. Ltd. v. P.V. Krishna Reddy (supra), the Complainants at the time of purchase of seeds were assured of 80% germination by the Petitioner -Corporation and yield of 30 quintal per acre. In that case also the complainant had informed the complainant's officers about disappointing state of the crops, but there was no response. The Complainant had informed the concerned Agricultural Officer at Mandal and District level and the Horticulturists who visited the field told the complainants at the time of inspection that the crop was defective and this could result into decreased yield. The complainant did not get expected yield. The compensation for loss of crop due to deficiency in service with costs of seeds and compensation on account of mental agony awarded by the Fora below was confirmed by this Commission.

14. THE Petitioner has raised various grounds to deny its liability. It has been urged by the Learned Counsel for the Petitioner that the Complainants have failed to prove that there was any defect in the seeds in question. In this case reliance has been placed on the reports at Annexure P -7 (Colly). These reports are Mahyco Grow Out Test Result for Cotton MECH:12 (M) HY -UNP produced at Dhanora regarding genetic purity of Lot No. SKB -108551B, in question and quality control germination report in respect of Lot in Question SKB -108551B wherein it speaks of 89% germination and 99.91% of purity of seeds. These reports are dated 2.6.2004. Counsel for the Petitioner has also relied upon the

report of MOU Committee, which has also been dealt with by us. Section 13(1)(c) provides for sending samples to the appropriate Laboratory for analysis and tests. Learned Counsel for the Petitioner has stated that it is for the complainants and the District Forum to take appropriate steps in terms of provisions of Section 13(1)(c) of the Act. In this respect, reliance was placed of *Hindustan Insecticides Ltd. v. Kopolu Sambasiva Rao and Ors.*, IV (2005) CPJ 94 (NC). In the case before us, the farmers had sown all the seeds and obviously they could not resort to Section 13(1)(c). Opposite party No. 1 did not choose to file any application to sending seeds to any laboratory under Section 13(1)(c). In *National Seeds Corpn. Ltd. v. M. Madusudan Reddy* (supra) it was observed that a farmer is not expected to conserve certain portion of the seeds and, therefore, cannot produce seeds from somewhere to get them tested to meet the requirements of Section 13(1)(c) of the Act. The Apex Court had also in *M/s. Maharashtra Hybrid Seeds Company v. Alavalapati Chandra Reddy and Ors.* (supra) had observed that as complainants had sown all the seeds purchased by them, they would not be in a position to send the seeds for analysis, but the opposite party could apply for sending the same for analysis but. the opposite parties had not chosen to file any application for sending the seeds to any Laboratory. Thus, the Petitioner before us neither filed any application; nor chose to resort to Section 13(1) (c) of the Act. In the facts and circumstances, failure for not resorting to Section 13(1)(c) cannot be attributed to the complainant and on the contrary the Petitioner themselves are to be held responsible for not resorting to the said provisions. We have already referred to the first hand information of the Mandal Agriculture Officer who had visited the crop on 12.11.2004 and observed flower shedding and that the boll were less when compared to other varieties. This would go to show that it could be due to defect in the seed resulting in flower shedding and less bolls. Taking into consideration the facts, circumstances, material on record as well as preponderance of probabilities, the District Forum had granted meagre compensation of Rs. 10,000 each after taking into account the value of the yield got by the complainants. District Forum, has particularly taken note of Certificate of Sarpanch, observations in letter of Mandal Agricultural Officer and the observations of the District Level Committee which visited the fields of the Complainants, assessed the crop land gave findings that the expected yield would be 6.45 quintals per acre, whereas the complainants got less yield ranging between 2 and 3.5 quintals per acre. We have also to bear in mind that the scope of revision is restricted and if there is material on record to sustain the findings, inference in revision is not justified. Accordingly in exercise of revisional jurisdiction, we are not inclined to interfere with the concurrent findings of the two Fora below. The revisions are accordingly dismissed with no order as to costs.