

(2015) 07 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

Case No : 1366-1379 of 2011

M/S. WESTERN AGRI SEEDS PVT. LTD. & ORS

APPELLANT

Vs

K. MURALIDHAR REDDY & ORS

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : (2015) 07 NCDRC CK 0112

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Radha, V. SRIDHAR REDDY

Judgement

1. These revision petitions have been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 10.12.2010, passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) in Appeal No. 1449 to 1462 / 2008, vide which the said appeals against the order dated 14.08.2008, passed by

the District Forum, Kurnool, were dismissed and the order of the District Forum allowing the consumer complaint in question, was upheld.

2. Briefly stated, the facts of the case are that consumer complaints were filed by some agriculturists against the petitioners/OPs, alleging supply of defective groundnut seeds of Western 44 variety to them. The complainants stated that during rabi season of agriculture year 2005-2006, they purchased the said seeds manufactured by OP-1/petitioner No. 1 through OP-3/petitioner No. 3 dealer at Kurnool. They were assured a yield of 25 qntl./acre with high content of oil, though in some pamphlet etc., they were assured to receive yield of 40 qntl./ hectare. They planted the said seeds in their lands and incurred heavy expenditure on purchase of fertilizers and other inputs etc. However, they obtained only about 100 kg of yield per acre with unfilled pods and hence, suffered heavy loss. The complainants informed the authorities in the Agriculture Department who inspected the crop and found that the seeds supplied were not

suitable to the climatic conditions of Andhra Pradesh. The consumer complaints, in question, were then filed demanding compensation for the loss of yield, the cost incurred on the seeds and other expenditure made etc. The District Forum allowed the said complaints based on the report of the officers of Department of Agriculture and that of Senior Scientist (Plant Breeding) Agriculture Research Station, Kadiri. Appeals were filed against the order of the District Forum, which were dismissed vide impugned order. Hence the present revision petitions.

3. Learned counsel for the petitioners stated during hearing that as per the observations recorded by Dr. K.S.S Naik, Sr. Scientist (Plant Breeding), ARS, Kadiri, there was no defect in the seeds and the germination etc. was normal. The said seeds were sold under valid licence granted by the State Government. The petitioners were, therefore, not liable to pay any compensation to the farmers. The learned counsel for the complainant/respondent, however, stated that the concurrent findings recorded by the Fora below were in accordance with law and should be upheld.

4. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

5. The basic question that arises for our consideration is whether the manufacturer, distributor or dealer of these seeds were liable to pay compensation to the complainant-farmers on account of allegation in the complaint that the said farmers did not receive proper yield of crop as expected by sowing seeds of Western-44 variety of groundnut. In reply to the complaint filed before the District Forum, the petitioner No. 1 took the stand that there was no defect in the seeds because there was proper germination and crop growth. The farmers in Kurnool District had been cultivating Western 44 variety with satisfactory results for the past 3 years. This version of the petitioner is, however, controverted from the report of Dr. K.S.S. Naik, Sr. Scientist (Plant Breeding), Agriculture Research Station, Kadiri which brings out that the variety in question, bred

for conditions in Gujarat State, was introduced into Andhra Pradesh State, without being tested for its adaptation under the agro-climatic conditions in that State and the said variety had been brought out of its ecological niche. The report of Dr. KSS Naik was sent to the Joint Director of Agriculture, Kurnool vide letter dated 20.04.2006 from Principal Scientist, Acharya N.G. Ranga Agricultural University, Agricultural Research Station, Kadiri and says that Dr. Naik had visited various mandals of Kurnool District to study the performance of groundnut variety Western-44 before filing his Diagnostic Field Report. Dr. Naik has stated that although the germination was normal and the cultivation practices were adopted by the farmers as per rabi recommendations, but the expected pod yield was very poor in the inspected areas. The pod number per plant was only 7.0 on the average, whereas the pod number for the local variety TM V2 was 30-35 pods per plant. Dr. Naik concluded that the poor performance of Western 44 groundnut variety in spite of all congenial management practices was attributable

to its poor adaptation in that tract. He has also observed that any variety before its release for general/commercial cultivation, has to be tested for its adaptation under comparative varietal trials, multilocation trials and adaptive minikits trials in comparison to the local variety and only then, it has to be released. Such procedure was not followed in respect of Western 44 variety. Dr. Naik also appeared for his oral examination before the District Forum, Kurnool and was cross-examined by the OPs. He deposed before the District Forum on the same lines as per the report submitted by him in writing.

6. During the course of hearing before us, the learned counsel for the petitioners was specifically asked whether the petitioners had produced any such material on record to substantiate their version that the Western 44 variety had been tested for its adaptation in the State of A.P., based on the agro-climatic conditions in that State. However, the petitioner could not provide any satisfactory explanation as to whether the variety in question had been tested under the conditions in A.P.

7. In a number of landmark judgments delivered by the Hon''ble Supreme Court and this Commission, the issue of obtaining poor yields by sowing improper/defective seeds has been discussed in detail. This Commission in RP No. 381/2012, "Ankur Seeds Pvt. Ltd. & Anr. vs. Motilal & Anr." decided on 05.11.2014, decided the issue in favour of the farmers, saying that the Opposite party, i.e., the producer of the seeds had not been able to prove that the seeds were not defective. On the other hand, the complainant had discharged the initial onus to prove that the seeds in question were substandard or defective. In the said petition, Hon''ble President, NCDRC, in his order dated 17.10.2014, stated as follows:- "9.....It is cardinal principle of law that ordinarily the burden of proving the fact rests on the party who asserts the affirmative issues and not on the party who denies it. Nevertheless, there is distinction between the phrase burden of proof and onus of proof. Explaining the said distinction, in A. Raghavamma & Anr. Vs. A. Chenchamma & Anr. AIR 1964 SC 136 , a three Judge Bench of the Hon''ble Supreme Court held that: there is essential distinction between burden of proof and onus of proof: burden of proof lies on the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence .

10. It is manifest from the statement of Objects and Reasons and the scheme of the Act that its main objective is to provide for better protection of the interests of the consumer. To achieve that purpose, a cheaper, easier, expeditious and effective redressal mechanism is provided in the Act, by establishing quasi-judicial forums at the District, State and National level, with wide range of powers vested in them. The rigors of the Evidence Act, 1872, and the Code of Civil Procedure, 1908 are not applicable to the proceedings before these quasi-judicial bodies. Undoubtedly, the Principles of natural justice are required to be observed.

11. Having due regard to the scheme and the purpose sought to be achieved, viz. better protection of the interest of the consumers, the provisions of the Act have to be given Purposive, Broad and Positive construction, more so, when the

remedy under the Act is in addition to and not in derogation of the provisions of any other law for the time being in force. (See: Section 3)."

In the same order, his Lordship further observed as follows:- 13. In my view therefore, to give effect to the Objective of the Act, its provisions have to be construed by resorting to the Doctrine of "Purposive Construction". Considered from that perspective, in my opinion, if a Complainant is able to create a high degree of probability of deficiency on the part of the Opposite Party, the onus would shift on to the Opposite Party (the defendant) to discharge the onus to prove his denial."

8. The facts and the circumstances of the case, clearly bring out that the complainants filed the consumer complaint in question when they failed to realise expected yield of crop from the seeds of Western 44 variety. They have been able to sufficiently discharge the onus of proof by producing the reports of Sr. Agriculture Scientists who have brought out that the Western 44 variety had not been tested for its adaptation in the State of A.P. The OPs have not been able to produce any evidence to show that the such trials to adduce the adaptation were ever conducted in the State of A.P.

8. The State Commission in the impugned order have rightly relied upon judgment made by the Hon"ble Apex Court in " H.N. Shankara Shastry vs. Assistant Director of Agriculture, Karnataka " [(2004) 6 SCC 230] , in which their Lordships observed that the Consumer Protection Act, was one of the benevolent piece of legislation intended to protect a large body of consumers from exploitation. The provisions of the Act ought to be interpreted in a rational manner for achieving the objective set-forth in the Act. The approach of the forums has to be rational consistent with the purpose of the Act rather than technical.

9. Based on the discussion above, we do not find any illegality, infirmity or jurisdictional error in the orders passed by the Consumer Fora below and hence there is no ground to interfere with these orders in the exercise of revisional jurisdiction. The revision petitions are, therefore, ordered to be dismissed and the impugned orders upheld.