

**(2015) 02 NCDRC CK 0040**

**In the National Consumer Disputes Redressal Commission**

**Case No : NO 2 of 2008**

NALAGARH STEEL ROLLING MILLS PVT . LTD

APPELLANT

Vs

I.C.I.C.I LOMBARED GENERAL INSURANCE CO.

RESPONDENT

**Date of Decision : 24-02-2015**

**Acts Referred:**

<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-2>Section 2(1)(d)  
(II)</a> - Definitions

**Citation : 2015 3 CPJ 167**

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

**Advocate : R.K. Kapoor, Kheyali Sarkar, D. Varadarajan**

## **Judgement**

1. The complainant, Nalagarh Steel Rolling Mills Pvt. Ltd., village Dadi Kaniya Nalagarh (H.P.) started their commercial production of iron rods (series) and similar other items on 18.07.2003. They have been supplying this material for civil construction works and similar purposes in various States of North India. As stated by the complainant, they first obtained insurance policy for their factory premises / building / plant and machinery / stocks through the National Insurance Company, which lapsed on 28.06.2005. Subsequently, the complainant obtained Insurance Policy from the present opposite party (O.P.), M/s ICICI Lombard General Insurance Company, valid for the period 27.08.2005 to 26.08.2006 for a sum of 10,30,00,000/- as per following details :- A. Building 30,00,000/-

B. Plant & Machinery 5,00,00,000/-

C. Stocks 5,00,00,000/-.

2. After the aforesaid policy expired on 26.08.2006, the complainant, after a lapse of about one and a half month, took another insurance policy for a sum of 16,00,00,000/- for the period 13.10.2006 to 12.10.2007 as per the following details:- A. Building 1,00,00,000/-

B. Plant & Machinery 5,00,00,000/-

C. Stocks 10,00,00,000/-

3. The policy is known as Standard Fire and Special Perils Policy (material damage) with policy number as 1001/0036250/01, issued at Chandigarh. The premium for the said policy has been stated to be 3,14,272.00/-. The risk code for the policy is stated to be 075.

4. It has been stated that there was an incidence of fire on 03.05.2007 at about 8:30 PM in the factory, resulting in damage to building, plant & machinery, stock etc. An FIR was lodged with the local police. A claim was lodged with the OP Insurance Company on 11.05.2007 for an amount of 2,50,91,000/-, but the same was repudiated by the Insurance Company vide their letter dated 30.09.2007 on the ground that the complainant had installed a gassifier plant in their premises, just about 10 days before the incident of fire and hence, they carried out a material alteration in the insured property which increased the risk of loss or damage by the insured perils. The complainant has also mentioned in the consumer complaint that the supply of gas producer (gassifier) was made on 8.08.2006 which was duly communicated to the respondent insurance company. The gas producer plant started working from January 2007 onwards and due information was given to the OPs. The respondents were bound to compensate them for the damage caused due to fire, as the same was covered within the parameters of the Insurance Policy. The complainant has also taken the plea that even if there had been any negligence on the part of the complainant, the OPs were bound to compensate them because there was no exclusion clause, saying that the claim was not payable, if the damage had taken place due to negligence of the insured.

5. The complainant has mentioned the details of loss in the claim form as 2,56.91 lakh, which includes a sum of 151.25 lakh for Gassifier plant.

6. The complaint was resisted by the OP Insurance Company by filing their written submissions / objections in which they stated that the complainant were not "consumer" because they were running their operations, admittedly, for commercial purpose and hence, they were not covered under the definition of "consumer" as given in section 2(1)(d)(ii) of the Consumer Protection Act, 1986. Further, the insured sum for plant and machinery was 5 crores in the policy, operational from 27.08.2005 to 26.08.2006. The insured sum for plant and machinery remained 5 crores in the policy in question, valid from 13.10.2006 to 12.10.2007 as well. The said gassifier plant had been supplied on 24.04.2007 by M/s. Harvindra Traders, Muzzafarnagar as is clear from a letter of the same date, i.e., 24.04.2007 from the suppliers addressed to the complainants, a copy of which has been attached with the complaint itself. The fire incident occurred when the gassifier was in the process of being installed. Further, as per general condition (B)(3) and general condition (B)(i) of the policy, the policy ceases to be valid, unless the insured obtains sanction of the insurance company for carrying out any alteration in the insured property in such a way as to increase the risk of loss or damage by the insured perils. The complainant had not given any

evidence to prove that they had informed the insurance company or obtained their approval for installation of the gassifier plant which resulted in breach of policy conditions. It had been brought out in the report of the surveyor as well as in the report of the forensic science laboratory that the explosion took place due to aerosol formation and ignition from the forceful spillage splashing of the furnace from the furnace oil tank, which resulted in blast in the gassifier and the flying debris of gassifier damaged the plant and machinery installed nearby. The claim was, therefore, not payable because the gassifier had not been installed in the factory at the time of taking the insurance policy and no intimation was given or permission taken at the time of bringing the gassifier to the factory.

7. During hearing before us, the learned counsel for the complainant argued that since they had obtained insurance policy from the OPs after making payment of full amount of premium, they were bound to compensate them for the loss that had occurred on account of fire. The learned counsel stated that even if, there had been any negligence on the part of the complainant, the OPs were bound to make payment of claim to them, as there was no clause in the terms and conditions of the insurance policy that the claim was not payable in the event of negligence on the part of the complainant. Moreover, there was no document to prove that the installation of gassifier had increased the risk to the plant and machinery. The incident of fire had been duly proved from the report of the local police and the fire brigade and the claim had also been lodged with the insurance company in time. The learned counsel for the OP insurance company, however, maintained that since there was a violation of the terms and conditions of the policy on the part of the complainant, the claim had been rightly repudiated by the insurance company. The surveyor appointed by the insurance company had made a comprehensive report that indicated clearly that there was explosion in the gassifier resulting in damage to plant and machinery. It was also clear from the record that the said gassifier had been installed much after taking the insurance policy in question.

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

9. The preliminary issue taken by the OP Insurance Company says that the complainant does not come under the definition of "consumer" as per section 2(1)(d)(ii) of the Consumer Protection Act, 1986. According to the OP, the operations carried out by the complainant are clearly for commercial purpose and hence, the provisions of Consumer Protection Act, 1986 are not applicable. In this regard, we may refer to an order of this Commission in *Harsolia Motors versus National Insurance Company* [I (2005) CPJ 27 NC], in which it has been held by this Commission that such complainants do fall within the definition of "consumer" under the Consumer Protection Act, 1986, although they may be indulging in commercial activity because there is no element of profit etc. while getting themselves insured and hence, such consumer complaints are maintainable. In the present case as well, the complainant does fall within the

definition of "consumer", following the order given by this Commission in the case referred to above.

10. The next point that arises for our consideration is whether there has been any breach of the terms and conditions of the insurance policy on the part of the complainant by installation of gassifier in the factory. The relevant policy clause as attached with the terms and conditions of the Standard Fire and Special Perils Insurance Policy in this case reads as follows:- "(B) General Conditions 1. This policy shall be voidable in the event of mis-representation, mis-description or non-disclosure of any material particular.

2. ....

3. Under any of the following circumstances the insurance ceases to attach as regards, the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy by or on behalf of the company:-

a) If the trade or manufacture carried on be altered , or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by Insured Perils .

b) If the building insured or containing the insured property becomes unoccupied and so remains for a period of more than 30 days.

c) If the interest in the property passes from the insured otherwise than by will or operation of law."

11. It is an admitted case of the parties that the insurance policy from the OP Insurance Company was taken by the complainant for the period from 27.08.2005 to 26.08.2006 for a sum of 10.3 crore which included 5 crore for plant and machinery. Subsequently, the policy in question was obtained from the insurance company for the period 13.10.2006 to 12.10.2007 for a sum of 16 crore, but that still included only 5 crores for plant and machinery . The provision of building was increased from 30 lakh to 1 crore and provision for stocks was increased from 5 crore to 10 crore, making a total insured sum of 16 crore for the policy in question. It is clear, therefore, that the sum insured for plant and machinery is the same in both the policies and the gassifier in question was clearly not included, while taking the insurance policy for the period 13.10.2006 to 12.10.2007 . It is also clear from record that M/s. Harvindra Traders handed over the said gassifier unit to the complainant on 24.04.2007 and their letter dated 24.04.2007 has been produced by the complainant themselves and is reproduced below:- HARVINDRA TRADERS

.....

.....

Ref. No.... Dated : 24.04.2007

To

The Managing Director

, Nalagarh Rolling Steel Mills Pvt. Ltd.

Nalagarh.

Sub:- Handing over of Gasproducer.

Dear Sir,

After successful trials of Gas Producer in all respect we are feeling nice to hand over the unit to your company on dated 24.04.2007.

You can run the Gas Producer according to your requirements.

For Harvindra Traders

Sd/-

Proprietor"

12. From the other documents produced by the complainant also, it is made out that there are invoices for the previous dates including the date 08.08.2006 for parts of the said machinery, but the letter dated 24.04.2007 makes it very clear that the unit was handed over to the complainant on 24.04.2007. There is no evidence on record which may say that the complainant ever informed the insurance company or obtained their permission before bringing the gassifier to their premises. The surveyor has, therefore, clearly brought out in his report that the present policy of insurance had taken effect from 13.10.2006 and at that time, the gassifier was not installed. It has also been brought out that the gassifier was under erection and commissioning which led to a material alteration of risk, but which fact was not reported to the insurance company. The said gassifier had substantially raised and amplified the risk of fire. The surveyor has also brought out that the root cause for the incident is as follows:- "It appears that during final calibration/ maintenance work of the Gassifier by the manufacturers engineers, there was some leakage of the Furnace oil from the intermediate furnace tank. The leaked oil evaporated and formed aerosol with the air which ignited leading to fire. The fire engulfed the gassifier leading to its explosion."

13. The surveyor has stated in the executive summary of the report as follows:- "During survey, we found evidence of explosion. The explosion and flying debris of gassifier damaged the plant and machinery installed nearby. It also damaged the furnace of insured, caused damaged to building with many GI sheets of the finished goods shed damaged. Moreover, the debris of the gassifier and building fell on the finished goods and caused erosion of the ribbing of the TMT bars stored therein."

14. The report dated 25.05.2007 from the Director, State Forensic Science

Laboratory, H.P. Junga, made after visit to the site of explosion by a 4-Member expert team, led by the Director himself, states that the brief cause of the blast was as follows:- "1. High temperature and pressure of fuel oil.

2. No record of temperature and pressure of the panel control available.

3. No staff appointed to record the temperature and pressure on the panel control.

4. Incompetent mechanic/Engineer from Mujaffernagar (UP) were on the job to install.

5. No documentary record of temperature and pressure available as required under ISO 9001-2000."

15. At the time of visit of the team, police personnel and some staff members of the steel mill were also present. The report of the expert team has brought out that the incident could have been avoided, had the factory administration observed ISO certificate requirements and maintained appropriate temperature, pressure and safety devices regularly. The explosion took place due to the negligence for not meeting the ISO certificate requirements for safety, especially storing of the oxygen cylinder and installation of fire extinguisher equipment near the furnace. It is the contention of the complainant that even if, there was any negligence on their part in meeting with the safety requirements, the Insurance Company was bound to pay their claim for the damage due to fire, as they had obtained the insurance policy in question after paying the requisite premium and there was no exclusion clause based on which there could be denial for payment of claim on account of negligence of the complainant. However, this contention of the complainant does not hold any force, as it has been clearly brought out from the contention of the OP Insurance Company that the gassifier was under erection and commissioning at the time of the explosion and the same had increased the risk to the plant and machinery. Since the addition of gassifier to the plant and machinery was a material factor for which no permission was taken from the Insurance Company, the OPs were well within their rights to deny the claim on the ground, that there had been violation of the terms and conditions of the policy.

16. The learned counsel for the OPs has drawn our attention to a judgment passed by Constitution Bench of the Hon"ble Apex Court in General Assurance Society Limited v Chandumull Jain, AIR 1996 SC 1644, in which it has been held as follows:- "In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves." The same view has been held in a catena of judgments made by the Hon"ble Apex Court subsequently also that the policy terms and conditions are to be strictly followed in a contract of insurance.

17. Based on the discussion above, it is held that the insurance claim is not payable because of violation of the terms and conditions of the Insurance Policy on the part of the complainant and that the Insurance Company has rightly repudiated the claim on account of such violation. The consumer complaint is, therefore, ordered to be dismissed with no order as to costs.