

(2012) 01 SC CK 0081

In the Supreme Court Of India

Case No : Civil Appeal No. 7543 of 2004, with Civil Appeal No. 622 of 2012 (Arising out of SLP (C) No. 32750 of 2009) , Civil Appeal No. 623 of 2012 (Arising out of SLP (C) No. 35350 of 2009) , Civil Appeal No. 7542 of 2004, Civil Appeal No. 3499 of 2009, Civil App

National Seeds Corporation Ltd.

APPELLANT

Vs

M. Madhusudhan Reddy and Another

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 34, 9
Consumer Protection (Amendment) Act, 1993 — Section 2
Consumer Protection Act, 1986 — Section 12, 13, 1

Citation : AIR 2012 SC 1160 : (2012) AIRSCW 1191 : (2012) 3 ALD 136 : (2012) 2 AWC 2138 : (2012) 106 CLA 449 : (2012) 1 CPJ 1 : (2012) 1 JLJR 417 : (2012) 1 JT 330 : (2012) 1 LW 977 : (2012) 4 MhLj 118 : (2012) 3 MLJ 166 : (2012) 2 PLJR 1 : (2012) 1 RCR(Civil) 838 :

Hon'ble Judges : G.S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Sudhir Kulshreshtha, M.Y. Deshmukh, Sachin Katariya, Rameshwar Prasad Goyal, M.J. Paul, Manoj Swamp, Devesh Kumar Tripathi, Ashok Anand, Kamal Mohan Gupta, Nitin S. Tambwekar, B.S. Sai and K. Rajeev, for the Appellant; R. Venkataramani G.N. Reddy, Aljo K. Joseph, Ravi Shankar, Gouri Karuna Das, Anu Gupta, Shanti Kumar Jaisani, Bhakti Pasrija, Sanjeev Kumar Sharma for Rani Jethmalani, E.R. Sumathy, Shobha, Sunil Kumar Verma, Ranjith K.C., Abhijit Sengupta, K. Rajeev, Rohit Kumar Singh and Venkateswara Rao Anumolu, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Leave granted in SLP (C) Nos. 32750 of 2009 and 35350 of 2009.

2. Appellant - M/s. National Seeds Corporation Ltd. (NSCL) is a Government of India company. Its main functions are to arrange for production of quality seeds

of different varieties in the farms of registered growers and supply the same to the farmers. The Respondents own lands in different districts of Andhra Pradesh and are engaged in agriculture/seed production. They filed complaints with the allegation that they had suffered loss due to failure of the crops/less yield because the seeds sold/supplied by the Appellant were defective. District Consumer Disputes Redressal Forums, Kurnool, Mehboob Nagar, Guntur, Khamman and Kakinada allowed the complaints and awarded compensation to the Respondents. The appeals and the revisions filed by the Appellant were dismissed by the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') and the National Consumer Disputes Redressal Commission respectively.

3. The Appellant has questioned the orders of the National Commission, which also implies its challenge to the orders of the State Commission and the District Forums mainly on the following grounds:

(a) the District Forums did not have the jurisdiction to entertain complaints filed by the Respondents because the issues relating to the quality of seeds are governed by the provisions contained in the Seeds Act, 1966 (for short, 'the Seeds Act') and any complaint about the sale or supply of defective seeds can be filed only under the Seeds Act and not under the Consumer Protection Act, 1986 (for short, 'the Consumer Act').

(b) the District Forums could not have adjudicated upon the complaints filed by the Respondents and awarded compensation to them without following the procedure prescribed u/s 13 of the Consumer Act.

(c) the growers of seeds, who had entered into agreements with it, are not covered by the definition of 'consumer' u/s 2(d) of the Consumer Act because they had purchased the seeds for commercial purpose.

4. For the sake of convenience, we may advert to the facts leading to the passing of orders by three Consumer Forums, which have been impugned in Civil Appeal Nos. 7543 of 2004, 3499 of 2009 and 4519 of 2009. We may also mention that in their complaints the Respondents had impleaded the officers of the Appellant as parties but for the purpose of this judgment we shall only refer to them as the Appellant.

Civil Appeal No. 7543 of 2004

5.1 Respondents M. Madhusudan Reddy and K. Rambhupal Reddy claim to have purchased 46 kg. of KBSH-1 Sunflower seeds from Area Manager of the Appellant at Kurnool. They undertook cultivation by adopting the recognized modes of preparing the field and irrigation and also used the prescribed fertilizer but there was germination only in 60% seeds and the height of the plants was uneven. The germination in the remaining 40% plants was slow. Not only this, flowering did not take place simultaneously. At the request of the Respondents, Area Manager of the Appellant inspected their field on 19.11.1999. He is said to

have agreed that there was less germination and the growth of the plants was uneven, but declined to give any assurance for payment of compensation.

5.2 Dissatisfied with the response of the Area Manager, the Respondents filed a complaint u/s 12 of the Consumer Act and prayed for award of compensation of Rs. 1,79,505/- towards the cost of seeds, fertilizer and pesticides and value of the lost crop with interest at the rate of 12 per cent per annum by alleging that they did not get the expected yield because the seeds sold by the Appellant were defective.

5.3 In the reply filed on behalf of the Appellant, it was pleaded that the seeds were purchased by Respondent No. 1 alone and there was no evidence of joint cultivation by the Respondents. The Appellant denied that the seeds were defective and pleaded that Respondent No. 1 did not get the expected yield because sufficient quantity of seeds had not been used for cultivation and there were no rain during the relevant period. It was also claimed that there was no complaint from any other farmer, who had purchased the same variety of seeds.

5.4 By an order dated 1.12.1999 passed in IA No. 141 of 1999, District Forum, Kurnool appointed Shri D.C. Rama Rao, retired Assistant Director of Agriculture as Commissioner and directed him to submit a report after inspecting the field of the Respondents. The Commissioner conducted the inspection and submitted report dated 1.12.1999, the relevant portions of which are extracted below:

The sunflower crop is raised under rainfed conditions. The soil is black and suitable for the Sunflower Crop. The cultivation aspects as observed is very satisfactory. The field is clean and free. The variety is said to be KBSJI the crop may be of 80 days above. Flowering is seen but it is not uniform. About 55% of the plants have flowers. About 25% of the plants have the head natured and about 10% of the plants are in the bud stage, while rest of the plants do not have flowers and there is no possibility for these plants to get flower, as they are only 3 feet height and the crop period to give flowers is over.

The following are the variation, I have noticed.

No.

Observed %

Height of the Flowers/Plants

Stage

Remarks

1.

45%

6 feet

Flowering and grain setting is in progress

Only two to three rows of flowers in head is setting seed. (Convex and flat heads)

2.

10%

4 feet

Flowering and the seed setting is started

No possibility for further growth.

3.

20%

6 feet

Head dropping since seed setting is over.

No growth is possible

4.

5%

4 feet

Head dropping since seed setting is over.

-do

5.

10%

4 to 6 feet

In bud stage

Growth can not be expected further.

6.

10%

3 to 4 feet

No flowering is seen.

Growth also is stunted.

Presence of leaf hairyness is seen in all the items except item (3) above to a certain extent i.e., 3 to 4 %.

In all the cases I have noticed difference in Head shape i.e, a few or convex a

few a flat and a few are concave.

In all the cases I have seen the heads are not uniform in size. Twenty five percent of heads which are dropping because of full maturity are bigger in size while many are of medium size.

I have noticed 0.1% of flowers with multiple heads.

There are gaps which are may be due to faulty seed or may be due to non germination of the seed.

In the heads which are flat and concave are having three rows of seed setting while in the convex heads the filling or setting of seed is satisfactory.

I have also seen two different plots of sunflower grown adjacent to the plot in question and are exhibiting uniformity of the plant, in height, size and opening of flower etcetra. This is an indication of a standard seed.

Similar uniformity is lacking in the plot in question. In all the three plots, there prevailed uniform physical and climatological factors.

Hence the wide variation in all the aspects as explained in the earlier paras gives a scope this seed is not standard up to the mark.

Particularly Hybrid seed be having with such a wide variation is not ideal.

From this I estimate the yield may be around 150 to 200 kgs/Ac as against the 600 to 700 kgs/Ac expected from the variety.

(Emphasis supplied)

5.5 The Appellant filed objections against the Commissioner's report and claimed that the assessment made by him was not based on any scientific method and the comparison with the adjacent field without having regard to the nature of soil, water facility etc. was unacceptable. The Appellant also contested the Commissioner's observation regarding satisfactory nature of cultivation by asserting that as per Vyavasaya Panchangam of Acharya N.G. Ranga Agriculture University, Hyderabad, 10 to 12 kgs. seeds were required for one hectare but Respondent No. 1 had used substantially less quantity of seeds for his holding of 21.10 acres.

5.6 The Respondents filed their affidavits along with copies of Invoice bill H. No. 000691 dated 11.6.1999, No. 3 Adangal, letter dated 6.11.1999 given to the Appellant, bill dated 29.6.1999 showing the purchase of fertilizers from Chaitanya Chemicals & Fertilizers, Kurnool and the photographs showing the unevenness in the plants. On behalf of the Appellant, an affidavit was filed along with copies of the documents mentioned therein.

5.7 The District Forum rejected the Appellant's objection to the Commissioner's report and held that the complainants (the Respondents herein) have succeeded in proving that the seeds sold to them were defective resulting in loss of crop.

Accordingly, the complaint of the Respondents was allowed and the Appellant was directed to pay Rs. 1,00,000/- towards loss of crop and Rs. 10,000/- towards the cost of fertilizer, pesticides, labour etc. with a stipulation that if the amount is not paid within one month, the Appellant shall be liable to pay interest @ 9% per annum.

5.8 The State Commission dismissed the appeal and held that Commissioner's report was rightly accepted by the District Forum because the Appellant had not produced any evidence to controvert the findings contained therein that the Respondent had taken proper steps for cultivation but did not get the expected yield due to faulty seeds.

5.9 The National Commission rejected the Appellant's plea that the only remedy available to the Respondents was to file a complaint under the Seeds Act, which is a special legislation vis-à-vis the Consumer Act, by observing that there is no provision in that Act for compensating a farmer whose crop may be adversely affected due to use of defective seeds sold by the Appellant. The argument that the District Forum could not have decided the complaint without complying with the mandate of Section 13 of the Consumer Act was negated by the National Commission and it was held that the report of the Commissioner, who was an expert in agriculture, was rightly relied upon by the District Forum for coming to the conclusion that the crop had failed due to the use of defective seeds.

Civil Appeal No. 3499 of 2000

6.1 Respondent P. v. Krishna Reddy is a grower having land in Khanpur village of Manopad Mandal of Mahabubnagar District of Andhra Pradesh. He was one of the persons selected by the Appellant in March 2000 for growing 'bitter gourd' seeds. The Appellant entered into an agreement with the Respondent and assured him that by producing seeds on its behalf he will get minimum net profit of Rs. 38,000/- per acre within a span of three months. In furtherance of the terms of agreement, the Appellant supplied 5 kgs. of 'bitter gourd' foundation seeds to the Respondent by charging Rs. 1,852.50 towards cost of the seeds, inspection fee etc. The Appellant also appointed a supervisor and the Respondent sowed seeds under his supervision by spending a sum of Rs. 22,470/- towards labour charges, fertilizers and pesticides. In September, 2000, officials of the Appellant visited the field of the Respondent and Ors. who had entered into similar agreements, and rejected the seeds grown by them on the pretext that the same were not fit for certification.

6.2 On receipt of the inspection report prepared by the officials of the Appellant, the Respondent contacted the Horticulture Officer, who also inspected the field and submitted a report with the conclusion that the crop had failed because the seeds were defective. The Respondent then filed a complaint under the Consumer Act and prayed for issue of a direction to the Appellant to pay compensation of Rs. 1,38,322/- with interest at the rate of 18% per annum and compensation of Rs. 1,00,000/- by alleging that he had suffered loss because the

foundation seeds supplied by the Appellant were defective.

6.3 In the reply filed on behalf of the Appellant, the following objections were taken to the maintainability of the complaint:

(i) that in view of the arbitration clause contained in the agreement, the only remedy available to the Respondent was to apply for arbitration and the District Forum did not have the jurisdiction to entertain the complaint.

(ii) that the Respondent had entered into an agreement for commercial production of the seeds and, as such, he cannot be treated as a 'consumer' within the meaning of Section 2(d) of the Consumer Act.

On merits, it was pleaded that Shri M. v. Narsimha Rao, Seed Officer of NSC Kurnool had advised the Respondent and other growers to remove off-types and diseased plants, which were liable to be rejected but the growers ignored his advice. It was then averred that during their visit on 8.9.2000, Shri M. V. Narsimha Rao, Shri M. V. Sudhakar and Area Manager, NSCL, Kurnool found 7% off-types seeds which were more than the prescribed standards and, therefore, their crops were rejected. The report of the Horticulture Officer was contested on the premise that the Respondent did not get the seeds tested in any government laboratory.

6.4 District Forum, Mahabubnagar overruled the objections of the Appellant by observing that the Respondent had purchased the seeds for earning livelihood by self-employment and not for any commercial purpose and that availability of remedy by way of arbitration does not operate as a bar to the entertaining of a complaint filed under the Consumer Act. The District Forum also referred to the Appellant's plea that issue relating to quality of the seeds can be determined only by getting the samples tested in a laboratory and rejected the same by making the following observations:

The complainant purchased 5 kgs of bitter gourd seeds under Ex.A-1 and sowed the seeds in an extent of 3 acres in his land. He sowed the entire seeds purchased by him. At the time of sowing, he might not have known that he had to keep back some seeds out of the seeds purchased by him as sample in the event of his approaching Forum if the seed crop was ultimately rejected by NSC. As all the seeds were sowed, he could not have taken out any seeds from the soil and produce them before the District Forum for following the procedure contemplated u/s 13 of C.P. Act. In those circumstances, the sample of seeds could not be sent to the appropriate Laboratory for analysis as contemplated u/s 13 of C.P. Act by the District Forum.

(Emphasis supplied)

6.5. The District Forum also opined that the Appellant had failed to substantiate its assertion that the Respondent had not removed off types and diseased plants despite the advice given by the Seed Officer by observing that no evidence had been produced in that regard. The District Forum finally concluded that the

foundation seeds supplied to the Respondent were faulty and the Appellant was liable to compensate him.

6.6 The State Commission dismissed the appeal filed by the Appellant and confirmed the order passed by the District Forum. The National Commission considered the objections raised by the Appellant to the maintainability of the complaint, referred to the judgments of this Court in M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, ,, State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, , CCI Chambers Co-op. Hsg. Society Ltd. Vs. Development Credit Bank Ltd., , and Indochem Electronic and Another Vs. Addl. Collector of Customs, A.P., , and held that the complaint filed by the Respondent was maintainable because the jurisdiction of the consumer forums is in addition to other remedies which may be available to him. The National Commission further held that the Respondent is covered by the definition of 'consumer' contained in Section 2(d) of the Consumer Act because he did not purchase the seeds for any commercial purpose. The Appellant's plea that the District Forum could not have awarded compensation to the Respondents without complying with Section 13 of the Consumer Act was negated by the National Commission by observing that after having used all the seeds for sowing the Respondent was not in a position to provide sample for testing and the report of the Horticulture Officer was sufficient for proving that the foundation seeds supplied by the Appellant were defective.

Civil Appeal No. 4519 of 2009

7.1 The Respondent is an agricultural labourer. He used to take the lands of other farmers on lease and cultivate the same for his livelihood. He purchased tomato seeds from the Appellant in the name of the landowners. When the Respondent noticed that there was no yield from the plants, he approached the Appellant's Manager at Vijayawada and requested him to inspect the field and assess the damages, but the latter did not respond. He then filed a complaint for award of compensation of Rs. 60,000/- with interest at the rate of 12% per annum by alleging that he had suffered loss because the seeds sold by the Appellant were defective.

7.2 The Appellant controverted the claim of the Respondent and pleaded that the complaint was liable to be dismissed because the District Forum was not competent to decide the issue relating to the quality of seeds. It was also pleaded that the crop had failed because while sowing the seeds the Respondent did not take necessary precaution.

7.3 By an order dated 27.12.1995, District Forum, Khammam appointed Shri A. Jeevan Babu, Advocate as Commissioner to inspect the field of the Respondent and estimate the loss, if any, sustained by him. The Advocate Commissioner requested the Principal, Agriculture College, Aswaraopet and Mandal Revenue Officer, Yerrupalem to depute an expert and an Administrative Officer of Peddagopavaram and Yerrupalem to assist him. The Principal deputed Shri P.

Sesha Reddy, Associate Professor and the M.R.O. deputed two executive officers to assist the Advocate Commissioner. Notice of the date of inspection was given to the Appellant but no one appeared on its behalf on the appointed day. After conducting inspection with the assistance of Shri P. Sesha Reddy and other officers, the Advocate Commissioner submitted report dated 31.1.1996, the relevant portions of which are extracted below:

The field and the tomato fruits were examined by me and the Agriculture Officer and all the persons. The Petitioner was also present, who told that he purchased the tomato seeds from the opposite party/respondent as usual and transplanted the same in the month of Sep. 1995 and also manured and applied pesticides as previous. The plants were sown at a distance of 3 feet from each plant. The tomato trees were grown upto 3 to 5 feet height, but no progress in the tomato fruits. The tomato fruits are small just like small bolls. There is no saleable value in the market for the said tomato fruits. The Agrl. Associate Professor Sri P. Seshi Reddy has collected the earth in the field and also trees along with the tomato fruits for testing purpose. On enquiry the Petitioner told regarding the mode of cultivation that he adopted in sowing 'Naru' applying manure and pesticides. The Petitioner complainant told that he was purchasing the tomato seeds from National Seeds Corporation Ltd., Vijayawada since more than 5 years and he sustained heavy loss this year due to non- production of the tomato yield since he supply of with inferior quality of tomato seeds. I conducted Panchanama at the field to that effect on 4.1.1996. Number of villagers gathered and they also opined that the Petitioner complainant has sustained heavy loss this year. He has shown empty tomato seeds packet, which is available with him. Sri P. Sesha Reddy, Associate Professor, Agrl. College, Aswaraopet has sent a report which is being submitted herewith. He opined that the seed 'Pusa Early Dwarf' supplied by, NSC, Vijayawada to the farmers of Yerrupalem and Pedergopalem villages may not be true type and crop failure to yield true type may be due to defective seed. I returned back to Khammam on 4-1-1996 at 9-30 p.m. by passengers train.

(Emphasis supplied)

7.4 The District Forum considered the material produced before it including the Commissioner's report, allowed the complaint of the Respondent and directed the Appellant to pay him Rs. 36,200/-. The State Commission and the National Commission approved the conclusion recorded by the District Forum that the Respondent had suffered loss because the seeds sold by the Appellant were defective. The National Commission dealt with the Appellant's plea that the District Forum had not complied with Section 13 and that there was violation of the Andhra Pradesh Seeds (Control) Order, 1983 and held:

It is well settled by now that u/s 13 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act' for short), the burden to prove the deficiency, if any, on the part of the Respondent, is on the complainant. Section 13 provides that where a complainant alleges a defect in the goods which cannot be

determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction to make an analysis/test, whichever may be necessary. In other words, there has to be some expert opinion to prove the fact. In the present case, Dr. P. Sesha Reddy had inspected only 9 fields, the details of which have been given by him in his Report and which have been referred to in the earlier paragraph. He did not inspect the fields of other Respondents. His Report is relevant insofar as the Respondents in Revision Petitions Nos. 131, 135, 136, 137, 140, 142, 143 and 150 of 2003 are concerned. Insofar as Respondents in the other 12 Revision Petitions, i.e., Revision Petition Nos. 132, 133, 134, 138, 139, 141, 144, 145, 146, 147, 148 and 149 of 2003 are concerned, they have failed to produce any expert opinion to show that the seeds did not germinate in their fields because the seeds supplied were defective.

Learned Counsel for the Petitioner raised another objection that under the Seeds Control Order, 1983, the Divisional Officer, Seeds alone is competent to inspect and report about the causes of failure of the crop. It was submitted that Revision Petition Nos. 131, 135, 136, 137, 140, 142, 143 and 150 of 2003 are liable to be dismissed as the defects cannot be determined without analysis or tests, which the Respondents in these Revision Petitions failed to get done. We find no substance in this submission. The Seeds Control Order, 1983 issued under G.O.M.s No. 97 F&A FP(2) dated 11.02.1985 does not debar any other agency from conducting an enquiry into the causes of failure of crop other than the officers mentioned therein. In the present case, it is at the instance of the District Forum that a Report was got from a Local Commissioner through Dr. P. Sesha Reddy, the expert who inspected the fields of 8 Respondents and not others.

The Petitioners had not sent their representatives to the fields of the complainant/respondents in spite of their making representations to that effect. Petitioner failed to take any step on the representations/complaints received from the Respondents. The Report submitted by the Expert can certainly be taken into consideration even if there was no analysis of the seeds from a laboratory. Non-examination of the seeds from the laboratory is not fatal to the case of the complainants whose fields were inspected by Dr. P. Sesha Reddy regarding which he gave an opinion as an expert. Nothing stopped the Petitioner from sending the sample seeds for analysis to a laboratory. There is no explanation as to why it could not send the seeds for analysis.

(Emphasis supplied)

8. Factual matrix of other cases is substantially similar except that some of the Respondents had purchased Castor seeds while others had purchased Chilli seeds. In a number of cases, the District Forums appointed Commissioner or referred the matter to the officers of the Agriculture Department for their opinion about the quality of seeds and ordered payment of compensation by relying upon

their reports.

9. We may also mention that in none of these cases, the Appellant had offered to produce samples of the variety of the seeds sold/supplied to the Respondents and made a prayer before the District Forum that the same may be got tested/analysed in an appropriate laboratory.

10. Learned Counsel for the Appellant argued that the impugned orders are liable to be set aside because the District Forums did not have the jurisdiction to entertain the complaints filed by the Respondents and the State and National Commissions committed grave error by brushing aside the Appellant's objections to the maintainability of the complaints. Learned Counsel emphasized that the Seeds Act is a special legislation enacted for regulating the quality of seeds and if the Respondents had any grievance about the quality of the seeds then the only remedy available to them was to either file an application u/s 10 of the Seeds Act or to approach the concerned Seed Inspectors for taking action u/s 19 read with Section 21 of that Act. They further argued that even if the complaints filed by the Respondents under the Consumer Act are held to be maintainable, the finding recorded by the District Forums that the seeds sold/supplied by the Appellant were defective is liable to be set aside because the procedure prescribed u/s 13 of the Consumer Act was not followed. Learned Counsel relied upon Section 8 of the Arbitration and Conciliation Act, 1996 and argued that in view of the arbitration clause contained in the agreements entered between the Appellant and the growers, the latter could have applied for arbitration and the Consumer Forums should have non-suited them in view of Section 8 of the Arbitration and Conciliation Act, 1996. An ancillary argument made by the Learned Counsel is that the growers of seeds cannot be treated as 'consumer' within the meaning of Section 2(d) because they had purchased seeds for commercial purpose.

11. Learned Counsel for the Respondents supported the impugned orders and argued that the District Forums did not commit any illegality by entertaining the complaints filed under the Consumer Act because the Seeds Act and the Rules framed thereunder do not contain any provision for compensating a farmer whose crop is lost or who does not get the expected yield if the seeds sold/supplied by the Appellant are defective. Learned Counsel submitted that the remedy available under the Consumer Act is in addition to other remedies available to a consumer and the complaints filed by the Respondents under that Act cannot be held as barred merely because they could also approach the Seed Inspector for taking action u/s 19 read with Section 21 of the Seeds Act. Learned Counsel further argued that the growers of seeds are covered by the definition of consumer because they had agreed to undertake cultivation of seeds on behalf of the Appellant for earning livelihood. On the issue of non compliance of Section 13 of the Consumer Act, Learned Counsel submitted that the District Forums had rightly relied upon the reports of the Court Commissioners and other evidence for recording findings that the seeds sold/supplied by the Appellant were

defective. Learned Counsel emphasized that the Respondents had used the entire quantity of seeds purchased by them for sowing and they had not retained samples by anticipating loss of crop or less yield. Learned Counsel pointed out that the Commissioners had inspected the fields of the Respondents and recorded categorical findings that the farmers had suffered losses because the seeds supplied by the Appellant were defective and the District Forums did not commit any illegality by relying upon their reports. Learned Counsel also submitted that the Appellant could have produced samples of the seeds sold/supplied to the Respondents and get them tested to prove that the same were not defective, but no such step was taken by it.

12. We shall first consider the question whether the Seeds Act is a special legislation vis-à-vis the Consumer Act and the District Forums could not have entertained and decided the complaints filed by the Respondents because they could seek redressal of their grievance regarding the quality of seeds sold by the Appellant by lodging complaint with the concerned Seed Inspectors with a request for taking action u/s 19 read with Section 21 of the Seeds Act.

13. With a view to increase agricultural production in the country, the Central Government felt the necessity of regulating the quality of certain seeds to be sold for the purpose of agriculture including horticulture and for achieving that object, Parliament enacted the Seeds Act. The Statement of Objects and Reasons enshrined in the Bill, which led to the enactment of the Seeds Act read as under:

In the interest of increased agricultural production in the country, it is considered necessary to regulate the quality of certain seeds, such as seeds of food crops, cotton seeds, etc., to be sold for purpose of agriculture (including horticulture).

The method by which the Bill seeks to achieve this object are:

(a) Constitution of a Central Committee consisting of representatives of the Central Government and the State Government, the National Seeds Corporation and other interests, to advise those Governments on all matters arising out of the proposed Legislation;

(b) fixing minimum standards of germination, purity and other quality factors;

(c) testing seeds for quality factors at the seed testing laboratories to be established by the Central Government and the State Governments;

(d) creating seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds;

(e) compulsory labelling of seed containers to indicate the quality of seeds offered for sale, and

(f) restricting the export, import and inter-State movement of non-descript seeds.'

14. Section 2 of the Seeds Act contains definitions of various terms including

'Central Seed Laboratory', 'Certification Agency', 'Committee', 'Seed', 'Seed Analyst', 'Seed Inspector' and 'State Seed Laboratory'. Section 3 casts a duty on the Central Government to constitute a Committee called the Central Seed Committee to advise it and the State Governments on matters arising out of the administration of the Act and to carry out other functions assigned to it by or under the Act. Section 4 empowers the Central Government to establish a Central Seed Laboratory or declare any seed laboratory as the Central Seed Laboratory to carry out the functions entrusted to such laboratory by or under the Act. Section 4(2) contains similar provisions for establishment of State Seed Laboratories by the State Government. Section 6 empowers the Central Government to issue a notification, after consulting the Committee constituted u/s 3 and specify the minimum limit of germination and purity with respect to any seed of any notified kind or variety and the mark or label to indicate that such seed conforms to the minimum limit of germination and purity. Section 7 regulates the sale of seeds of notified kinds or varieties. u/s 8, the State Government can establish a certification agency for the State to carry out the functions entrusted to such agency by or under the Act. This power can also be exercised by the Central Government in consultation with the State Government. Sections 8A to 8E provide for establishment of the Central Seed Certification Board and appointment of other Committees by the Board. Section 9 provides for grant of certificate by certification agency to any person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety. Sections 9 and 9 contain the procedure for grant of certificate. Section 10 provides for revocation of the certificate granted u/s 9. Any person aggrieved by an order made under Sections 9 or 10 can file an appeal u/s 11. u/s 12, the State Government is empowered to issue notification for appointment of Seed Analysts and define the area of their jurisdiction. Similar provision is contained in Section 13 for appointment of Seed Inspectors. The powers of the Seed Inspector are enumerated in Section 14. Section 15 contains the procedure which is required to be followed by the Seed Inspector for taking samples. In terms of Section 15, the sample taken by the Seed Inspector is required to be sent to the Seed Analyst for the purpose of analysis. Section 16 lays down the procedure for submission of the report by the State Seed Laboratory and Central Seed Laboratory. Section 19 specifies the acts which can be punished with an imprisonment upto six months or with fine of Rs. 1,000/- or with both. Section 21 deals with offences by the companies. Sections 6, 7, 9, 10, 11, 14 and (b), 16, 19, 20 and 21 of the Seeds Act, which have bearing on the decision of the first question raised by the Appellant are reproduced below:

6. Power to specify minimum limits of germination and purity, etc.:

The Central Government may, after consulting with the Committee and by notification in the Official Gazette, specify:

(a) the minimum limits of germination and purity with respect to any seed of any notified kind or variety;

(b) the mark or label to indicate that such seed conforms to the minimum limits of germination and purity specified under Cl.(a) and the particulars which such mark or label may contain.

7. Regulation or sale of seeds of notified kinds or varieties:

No person shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless:

(a) such seed is identifiable as to its kind or variety;

(b) such seed conforms to the minimum limits of germination and purity specified Cl.(a) of Section 6;

(c) the container of such seed bears in the prescribed manner the mark or label containing the correct particulars thereof specified under Cl.(b) of Section 6; and

(d) he complies with such other requirements as may be prescribed.

9. Grant of certificate by certification agency -

(1) Any person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety may, if he desires to have such seed certified by the certification agency, apply to the certification agency for the grant of a certificate for the purpose.

(2) Every application under Sub-section (1) shall be made in such form, shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) On receipt of any such application for the grant of a certificate, the certification agency may, after such enquiry as it thinks fit and after satisfying itself that the seed to which the application relates conforms to the prescribed standards grant a certificate in such form and on such conditions as may be prescribed.

Provided that such standards shall not be lower than the minimum limits of germination and purity specified for that seed under Clause (a) of Section 6.

10. Revocation of certificate - If the certification agency is satisfied, either on a reference made to it in this behalf or otherwise, that:

(a) the certificate granted by it u/s 9 has been obtained by misrepresentation as to an essential fact; or

(b) the holder of the certificate has, without reasonable cause, failed to comply with the conditions subject to which the certificate has been granted or has contravened any of the provisions of this Act or the rules made there under,

then, without prejudice to any other penalty to which the holder of the certificate may be liable under this Act, the certification agency may, after giving the holder

of the certificate an opportunity of showing cause, revoke the certificate.

11. Appeal - (1) Any person aggrieved by a decision of a certification agency u/s 9 or Section 10, may, within thirty days from the date on which the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal to such authority as may be specified by the State Government in this behalf:

Provided that the appellate authority may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under Sub-section (1), the appellate authority shall, after giving the Appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(3) Every order of the appellate authority under this section shall be final.

14. Powers of Seed Inspector. - (1) The Seed Inspector may:

(a) take samples of any seed of any notified kind or variety from-

(i) any person selling such seed; or

(ii) any person who is in the course of conveying, delivering or preparing to deliver such seed to a purchaser or a consignee; or

(iii) a purchaser or a consignee after delivery of such seed to him;

(b) send such sample for analysis to the Seed Analyst for the area within which such sample has been taken

16. Report of Seed Analyst. - (1) The Seed Analyst shall, as soon as may be after the receipt of the sample under Sub-section (2) of Section 15, analyse the sample at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.

(2) After the institution of a prosecution under this Act, the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending any of the samples mentioned in Clause (a) or Clause (c) of Sub-section (2) of Section 15 to the Central Seed Laboratory for its report and on receipt of the application, the Court shall first ascertain that the mark and the seal or fastening as provided in Clause (b) of Sub-section (1) of Section 15 are intact and may then despatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

(3) The report sent by the Central Seed Laboratory under Sub-section (2) shall

supersede the report given by the Seed Analyst under Sub-section (1).

(4) Where the report sent by the Central Seed Laboratory under Sub-section (2) is produced in any proceedings u/s 19, it shall not be necessary in such proceeding to produce any sample or part thereof taken for analysis.

19. Penalty. - If any person:

(a) contravenes any provision of this Act or any rule made thereunder; or

(b) prevents a Seed Inspector from taking sample under this Act; or

(c) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act, he shall, on conviction, be punishable-

(i) for the first offence with fine which may extend to five hundred rupees, and

(ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

20. Forfeiture of property - When any person has been convicted under this Act for the contravention of any of the provisions of this Act or the rules made thereunder, the seed in respect of which the contravention has been committed may be forfeited to the Government.

21. Offences by companies. - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purpose of this section,-

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm.'

15. In exercise of the power vested in it u/s 25 of the Seeds Act, the Central Government framed the Seeds Rules, 1968 (for short, 'the Rules'). Rules 13, 23(a) to (d), (g) and 23-A of the Rules, which are also relevant for deciding the first question are reproduced below:

13. Requirements to be complied with by a person carrying on the business referred to in Section 7:

(a) No person shall sell, keep for sale, variety, after the date recorded on the container, mark or label as the date upto which the seed may be expected to retain the germination not less than that prescribed under Cl.(a) of Section 6 of the Act.

(2) No person shall alter, obliterate or deface any mark or label attached to the container of any seed.

(3) Every person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety u/s 7, shall keep over a period of three years a complete record of each lot of seed sold except that any seed sample may be discarded one year after the entire lot represented by such sample has been disposed of. The sample of seed kept as part of the complete record shall be as large as the size notified in the Official Gazette. This sample, if required to be tested, shall be tested only for determining the purity.

23. Duties of a Seed Inspector. - In addition to the duties specified by the Act the Seed Inspector shall.:

(a) inspect as frequently as may be required by certification agency all places used for growing, storage or sale of any seed of any notified kind or variety;

(b) satisfy himself that the conditions of the certificates are being observed;

(c) procedure and send for analysis, if necessary, samples of any seeds, which he has reason to suspect are being produced stocked or sold or exhibited for sale in contravention of the provisions of the Act or these rules;

(d) investigate any complaint, which may be made to him in writing in respect of any contravention of the provisions of the Act or these rules;

(g) institute prosecutions in respect of breaches of the Act and these rules; and

23-A. Action to be taken by the Seed Inspector if a complaint is lodged with him.

- (1) If farmer has lodged a complaint in writing that the failure of the crop is due to the defective quality of seeds of any notified kind or variety supplied to him, the Seed Inspector shall take in his possession the marks or labels, the seed containers and a sample of unused seeds to the extent possible from the complainant for establishing the source of supply of seeds and shall investigate the causes of the failure of his crop by sending samples of the lot to the Seed Analyst for detailed analysis at the State Seed Testing Laboratory. He shall

thereupon submit the report of his findings as soon as possible to the competent authority.

(2) In case, the Seed Inspector comes to the conclusion that the failure of the crop is due to the quality of seeds supplied to the farmer being less than the minimum standards notified by the Central Government, he shall launch proceedings against the supplier for contravention of the provisions of the Act or these Rules.

16. An analysis of the above reproduced provisions shows that for achieving the object of regulating the quality of certain seeds to be sold for the purposes of agriculture including horticulture, the legislature has made provisions for specifying the minimum limits of germination and purity of notified kind or variety of seeds and the affixation of mark or label to indicate that such seed conforms to those limits, for restricting sale, etc., of any notified kind or variety of seed unless the same is identifiable as to its kind or variety and conforms to the minimum limits of germination and purity; grant of certificate by the certification agency to certain category of person; revocation of the certificate; appointment of Seed Analysts and Seed Inspectors with power to the latter to take sample of any seed of any notified kind or variety from any person selling such seed or a producer of seeds and send the same for analysis by the State Seed Laboratory or the Central Seed Laboratory. The Seed Inspector can launch prosecution for violation of any provision of the Seeds Act or any Rule made thereunder. If a person is found guilty then he can be punished with imprisonment upto a maximum period of six months or he can be visited with a penalty of fine upto Rs. 1,000/- or with both. If an offence is committed by a company, then every person who, at the time of commission of offence was incharge of and was responsible to the company of the conduct of its business can be punished. Rule 13 of the Rules casts a duty on every person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety to keep complete record of each lot of seeds sold for a period of three years. He is also required to keep sample of the seed, which can be tested for determining the purity.

17. Though, the Seeds Act is a special legislation enacted for ensuring that there is no compromise with the quality of seeds sold to the farmers and Ors. and provisions have been made for imposition of substantive punishment on a person found guilty of violating the provisions relating the quality of the seeds, the legislature has not put in place any adjudicatory mechanism for compensating the farmers/growers of seeds and other similarly situated persons who may suffer loss of crop or who may get insufficient yield due to use of defective seeds sold/supplied by the Appellant or any other authorised person. No one can dispute that the agriculturists and horticulturists are the largest consumers of seeds. They suffer loss of crop due to various reasons, one of which is the use of defective/sub- standard seeds. The Seeds Act is totally silent on the issue of payment of compensation for the loss of crop on account of use of defective

seeds supplied by the Appellant and Ors. who may obtain certificate u/s 9 of the Seeds Act. A farmer who may suffer loss of crop due to defective seeds can approach the Seed Inspector and make a request for prosecution of the person from whom he purchased the seeds. If found guilty, such person can be imprisoned, but this cannot redeem the loss suffered by the farmer.

18. At this stage, we may notice the background in which the Consumer Act was enacted and its salient features. The General Assembly of the United Nations after extensive discussion and negotiations among Governments and taking into account the interest and needs of consumers in all countries, particularly those in developing countries, adopted the draft guidelines submitted by the Secretary General to the Economic and Social Council (UNESCO) in 1983. The objectives of these guidelines are:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers.
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers.
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers.
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers.
- (e) To facilitate the development of independent consumer groups.
- (f) To further international cooperation in the field of consumer protection.
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.

19. India is a signatory to the resolution passed by the General Assembly which is known as Consumer Protection Resolution No. 39/248. With a view to fulfill the objectives enshrined in the guidelines adopted by the General Assembly of the United Nations and keeping in view the proliferation of international trade and commerce and vast expansion of business and trade which resulted in availability of variety of consumer goods in the market, the Consumer Protection Bill was introduced to provide for better protection of the interest of consumers. The salient features of the Consumer Protection Bill were to promote and protect the rights of consumers such as:

- (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices.

(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

(e) the right to seek Redressal against unfair trade practices or unscrupulous exploitation of consumers, and

(f) right to consumer education.

20. The preamble to the Act shows that this legislation is meant to provide for better protection of the interests of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. Section 2 of the Consumer Act contains definitions of various terms. Clauses (d) and (f) thereof read as under:

2. (d) 'consumer' means any person who,:

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.-For the purposes of Sub-clause (i), 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (The explanation was substituted w.e.f. 15.3.2003 by Consumer Protection (Amendment) Act 62, 2003)

(f) 'defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

21. Section 3 declares that the provisions the Consumer Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 9 provides for establishment of the Consumer Forums at the District, State and National level. Section 11 relates to jurisdiction of the District Forum. Section 12 prescribed the manner in which the complaint can be filed

before the District Forum and the procedure required to be followed for entertaining the same. Once the complaint is admitted, the procedure prescribed u/s 13 is required to be followed by the District Forum. Sub-section (1) of Section 13, which lays down the procedure to be followed after admission of the complaint reads as under:

13. Procedure on admission of complaint. - (1) The District Forum shall, on admission of a complaint, if it relates to any goods,:

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under Clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in Clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under Clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under Clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in Clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under Clause (f) and issue an appropriate order u/s 14.

22. The scope and reach of the Consumer Act has been considered in large number of judgments - Lucknow Development Authority Vs. M.K. Gupta, Fair Air Engineers (P) Ltd. v. N.K. Modi (supra), Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., State of Karnataka v. Vishwabharathi House Building Cooperative Society (supra), CCI Chambers Cooperative Housing Society Limited v. Development Credit Bank Limited (supra), The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others, H.N. Shankara Shastry Vs. The Asst. Director of Agriculture, Karnataka, and Trans Mediterranean Airways v. Universal Exports and Anr. (2011) 10 SCC 316. However, we do not consider it necessary to discuss all the judgments and it will be sufficient to notice some passages from the judgment in Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (supra). In that case, the 2-Judge Bench noticed the background, the objects and reasons, and the purpose for which the Consumer Act was enacted, referred to the judgments in Lucknow Development Authority v. M.K. Gupta (supra), Fair Air Engineers Private Limited v. N.K. Modi (supra) and proceeded to observe as under:

The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of the 1986 Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.

23. It can thus be said that in the context of farmers/growers and other consumer of seeds, the Seeds Act is a special legislation insofar as the provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any person who violates the provisions of the Act and/or the

Rules is brought before the law and punished. However, there is no provision in that Act and the Rules framed thereunder for compensating the farmers etc. who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds. That apart, there is nothing in the Seeds Act and the Rules which may give an indication that the provisions of the Consumer Act are not available to the farmers who are otherwise covered by the wide definition of 'consumer' u/s 2 of the Consumer Act. As a matter of fact, any attempt to exclude the farmers from the ambit of the Consumer Act by implication will make that Act vulnerable to an attack of unconstitutionality on the ground of discrimination and there is no reason why the provisions of the Consumer Act should be so interpreted.

24. In *Kishore Lal Vs. Chairman, Employees State Insurance Corporation*, ,, this Court was called upon to consider the question whether a person (appellant) who got his wife treated in ESI dispensary could file a complaint under the Consumer Act for award of compensation by alleging negligence on the part of the doctors in the dispensary. The District Forum, the State Commission and the National Commission declined relief to the Appellant on the ground that the medical services provided in ESI dispensary were gratuitous. This Court referred to Sections 74 and 75 of the Employees State Insurance Act, 1948, the definition of the 'consumer' contained in Section 2 of the Consumer Act, referred to the judgments in *Spring Meadows Hospital and Another Vs. Harjol Ahluwalia* through *K.S. Ahluwalia and Another*, , *State of Karnataka v. Vishwabharathi House Building Cooperative Society (supra)*, *Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (supra)* and observed:

The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.

25. The definition of 'consumer' contained in Section 2 of the Consumer Act is very wide. Sub-clause (i) of the definition takes within its fold any person who buys any goods for a consideration paid or promised or partly paid and partly promised, or under any system of deferred payment. It also includes any person who uses the goods though he may not be buyer thereof provided that such use is with the approval of the buyer. The last part of the definition contained in Section 2(d)(i) excludes a person who obtains the goods for resale or for any commercial purpose. By virtue of the explanation which was added w.e.f. 18.6.1993 by the Consumer Protection (Amendment) Act 50 of 1993, it was clarified that the expression 'commercial purpose' used in Sub-clause (i) does not include use by a consumer of goods bought and used by him for the purpose of

earning his livelihood by means of self-employment. The definition of 'consumer' was interpreted in Lucknow Development Authority v. M.K. Gupta (supra). The Court referred to the dictionary meanings of the word 'consumer', definition contained in Section 2(d) and proceeded to observe:

It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in Clause (r) and even to define 'defect' and 'deficiency' by Clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss.

(Emphasis supplied)

26. Since the farmers/growers purchased seeds by paying a price to the Appellant, they would certainly fall within the ambit of Section 2(d)(i) of the Consumer Act and there is no reason to deny them the remedies which are available to other consumers of goods and services.

27. The next question which needs consideration is whether the growers of seeds were not entitled to file complaint under the Consumer Act and the only remedy available to them for the alleged breach of the terms of agreement was to apply for arbitration. According to the Learned Counsel for the Appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the Appellant that the only remedy available to the farmers and growers who claim to have suffered loss on account of use of defective seeds sold/supplied by the Appellant was to file complaints with the concerned Seed Inspectors for taking action under Sections 19 and/or 21 of the Seeds Act.

28. The consideration of this issue needs to be prefaced with an observation that the grievance of a farmer/grower who has suffered financially due to loss or failure of crop on account of use of defective seeds sold/supplied by the

Appellant or by an authorised person is not remedied by prosecuting the seller/supplier of the seeds. Even if such person is found guilty and sentenced to imprisonment, the aggrieved farmer/grower does not get anything. Therefore, the so-called remedy available to an aggrieved farmer/grower to lodge a complaint with the concerned Seed Inspector for prosecution of the seller/supplier of the seed cannot but be treated as illusory and he cannot be denied relief under the Consumer Act on the ground of availability of an alternative remedy.

29. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996 Act. Moreover, the plain language of Section 3 of the Consumer Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force. In *Fair Air Engineers (P) Ltd. v. N.K. Modi* (supra), the 2-Judge Bench interpreted that section and held as under:

the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words 'in derogation of the provisions of any other law for the time being in force' would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available u/s 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consensual arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3

thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.

(Emphasis supplied)

30. In *Skypay Couriers Limited v. Tata Chemicals Limited* (supra) this Court observed:

Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.

31. In *Trans Mediterranean Airways v. Universal Exports* (supra) it was observed:

In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.

32. The aforementioned judgments present a clear answer to the Appellant's challenge to the impugned orders on the ground that the growers had not availed the remedy of arbitration. An ancillary point which may not detain us for long but needs consideration is whether a grower is excluded from the definition of 'consumer' because the seeds produced by him are required to be supplied to the Appellant. The argument of the Learned Counsel for the Appellant is that the foundation seeds were supplied to the growers for commercial purpose and as such their cases would fall in the exclusion part of the definition of 'consumer'. In the first blush, this argument appears attractive but on a deeper examination, we do not find any merit in it. The expression 'any commercial purpose' was considered in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute*, , The two-Judge Bench referred to the amended definition of 'consumer' contained in Section 2(d) and observed:

Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means insofar as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration; (iii) but does

not include a person who buys such goods for resale or for any commercial purpose. The expression 'resale' is clear enough. Controversy has, however, arisen with respect to meaning of the expression 'commercial purpose'. It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. 'Commercial' denotes 'pertaining to commerce' (Chamber's Twentieth Century Dictionary); it means 'connected with, or engaged in commerce; mercantile; having profit as the main aim' (Collins English Dictionary) whereas the word 'commerce' means 'financial transactions especially buying and selling of merchandise, on a large scale' (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods 'with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit' he will not be a 'consumer' within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion - the expression 'large scale' is not a very precise expression ' Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993.

33. What needs to be emphasized is that the Appellant had selected a set of farmers in the area for growing seeds on its behalf. After entering into agreements with the selected farmers, the Appellant supplied foundation seeds to them for a price, with an assurance that within few months they will be able to earn profit. The seeds sown under the supervision of the expert deputed by the Appellant. The entire crop was to be purchased by the Appellant. The agreements entered into between the Appellant and the growers clearly postulated supply of the foundation seeds by the Appellant with an assurance that the crop will be purchased by it. It is neither the pleaded case of the Appellant nor any evidence was produced before any of the Consumer Forums that the growers had the freedom to sell the seeds in the open market or to any person other than the Appellant. Therefore, it is not possible to take the view that the growers had purchased the seeds for resale or for any commercial purpose and they are excluded from the definition of the term 'consumer'. As a matter of fact, the evidence brought on record shows that the growers had agreed to produce seeds on behalf of the Appellant for the purpose of earning their livelihood by using their skills and labour.

34. We shall now deal with the question whether the District Forum committed a jurisdictional error by awarding compensation to the Respondents without complying with the procedure prescribed u/s 13. A reading of the plain language of that section shows that the District Forum can call upon the complainant to provide a sample of goods if it is satisfied that the defect in the goods cannot be determined without proper analysis or test. After the sample is obtained, the same is required to be sent to an appropriate laboratory for analysis or test for the purpose of finding out whether the goods suffer from any defect as alleged in the complaint or from any other defect. In some of these cases, the District Forums had appointed agricultural experts as Court Commissioners and directed

them to inspect the fields of the Respondents and submit report about the status of the crops. In one or two cases the Court appointed Advocate Commissioner with liberty to him to avail the services of agricultural experts for ascertaining the true status of the crops. The reports of the agricultural experts produced before the District Forum unmistakably revealed that the crops had failed because of defective seeds/foundation seeds. After examining the reports the District Forums felt satisfied that the seeds were defective and this is the reason why the complainants were not called upon to provide samples of the seeds for getting the same analysed/tested in an appropriate laboratory. In our view, the procedure adopted by the District Forum was in no way contrary to Section 13 of the Consumer Act and the Appellant cannot seek annulment of well-reasoned orders passed by three Consumer Forums on the specious ground that the procedure prescribed u/s 13 of the Consumer Act had not been followed.

35. The issue deserves to be considered from another angle. Majority of the farmers in the country remain illiterate throughout their life because they do not have access to the system of education. They have no idea about the Seeds Act and the Rules framed thereunder and other legislations, like, Protection of Plant Varieties and Farmers' Rights Act, 2011. They mainly rely on the information supplied by the Agricultural Department and Government agencies, like the Appellant. Ordinarily, nobody would tell a farmer that after purchasing the seeds for sowing, he should retain a sample thereof so that in the event of loss of crop or less yield on account of defect in the seeds, he may claim compensation from the seller/supplier. In the normal course, a farmer would use the entire quantity of seeds purchased by him for the purpose of sowing and by the time he discovers that the crop has failed because the seeds purchased by him were defective nothing remains with him which could be tested in a laboratory. In some of the cases, the Respondents had categorically stated that they had sown the entire quantity of seeds purchased from the Appellant. Therefore, it is naïve to blame the District Forum for not having called upon the Respondents to provide the samples of seeds and send them for analysis or test in the laboratory.

36. It may also be mentioned that there was abject failure on the Appellant's part to assist the District Forum by providing samples of the varieties of seeds sold to the Respondents. Rule 13(3) casts a duty on every person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety to keep over a period of three years a complete record of each lot of seeds sold except that any seed sample may be discarded one year after the entire lot represented by such sample has been disposed of. The sample of seed kept as part of the complete record has got to be of similar size and if required to be tested, the same shall be tested for determining the purity. The Appellant is a large supplier of seeds to the farmers/growers and growers. Therefore, it was expected to keep the samples of the varieties of seeds sold/supplied to the Respondents. Such samples could have been easily made available to the District Forums for being sent to an appropriate laboratory for the purpose of analysis or test. Why the Appellant did not adopt that course has

not been explained. Not only this, the officers of the Appellant, who inspected the fields of the Respondents could have collected the samples and got them tested in a designated laboratory for ascertaining the purity of the seeds and/or the extent of germination, etc. Why this was not done has also not been explained by the Appellant. These omissions lend support to the plea of the Respondents that the seeds sold/supplied by the Appellant were defective.

37. In Maharashtra Hybrid Seeds Co. Ltd. Vs. Alavalapati Chandra Reddy and Others, ,, this Court did not decide the issue relating to the alleged non-compliance of Section 13 of the Consumer Act, but approved the reasoning of the State Commission which found fault with the Appellant for not taking steps to get the seeds tested in an appropriate laboratory. In that case, the Respondent had complained that the sunflower seeds purchased by him did not germinate because the same were defective. The complaint was contested by the Appellant on several grounds. The District Forum allowed the complaint and declared that the Respondent was entitled to compensation @ Rs. 2,000/- per acre in addition to the cost of the seeds. The State Commission rejected the objection of the Appellant that the District Forum had not collected the sample of the seeds and sent them for analysis or test for determining the quality. The National Commission summarily dismissed the revision filed by the Appellant. In paragraph 4 of the judgment, this Court extracted the finding recorded by the State Commission for upholding the order of the District Forum and declined to interfere with the award of compensation to the Respondent. The relevant portions of paragraph 4 are reproduced below:

Thus, it is clear that it is on the permit granted by the Agricultural Officer that the complainants purchased seeds from the opposite parties and that the same Agricultural Officer visited the land and found that there was no germination. In view of the letter written by the Agricultural Officer to the opposite parties to which they sent no reply, it is clear that the same seeds that were purchased from the opposite parties were sown and they did not germinate. In view of the aforesaid letter of the Agricultural Officer, the District Forum felt that the seeds need not be sent for analysis. Moreover, if the opposite parties have disputed that the seeds were not defective they would have applied to the District Forum to send the samples of seeds from the said batch for analysis by appropriate laboratory. But the opposite parties have not chosen to file any application for sending the seeds to any laboratory. Since it is probable that the complainants have sown all the seeds purchased by them, they were not in a position to send seeds for analysis. In these circumstances, the order of the District Forum is not vitiated by the circumstance that it has not on its own accord sent the seeds for analysis by an appropriate laboratory.

* * *

It is clear from the letter of the Agricultural Officer that the opposite parties in spite of their promise, never visited the fields of the complainants. The opposite parties did not adduce any material to show that the complainants did not

manure properly or that there is some defect in the field. In the absence of such evidence and in view of the conduct of the opposite parties not visiting the fields and having regard to the allegation in the complaint that there were rains in the month of September 1991 and the complainants sowed the seeds, it cannot be said that there is any defect either in the manure or in the preparation of the soil for sowing sunflower seeds.

(Emphasis supplied)

38. Reference can usefully be made to the orders of the National Commission in *N.S.C. Ltd. v. Guruswamy* (2002) CPJ 13, *E.I.D. Parry (I) Ltd. v. Gourishankar* (2006) CPJ 178 and *India Seed House v. Ramjilal Sharma* (2008) 3 CPJ 96. In these cases the National Commission considered the issue relating to non-compliance of Section 13 in the context of the complaints made by the farmers that their crops had failed due to supply of defective seeds and held that the District Forum and State Commission did not commit any error by entertaining the complaint of the farmers and awarding compensation to them. In the first case, the National Commission noted that the entire quantity of seeds had been sown by the farmer and observed:

There is no doubt in our mind that where complainant alleges a defect in goods which cannot be determined without proper analysis or test of the goods, then, the sample need to be taken and sent to a laboratory for analysis or test. But, the ground reality in the instant case is that reposing faith in the seller, in this case the leading Public Sector Company dealing in seed production and sale, the Petitioner sowed whole of the seed purchased by him. Where was the question of any sample seed to be sent to any laboratory in the case? Whatever the Respondent/Complainant had, was sown. One could have appreciated the bonafides better, if sample from the crop was taken during the visit of Assistant Seed Officer of Petitioner - N.S.C. and sent for analysis. Their failure is unexceptionable. In our view, it is the Petitioner Company which failed to comply with the provisions of Section 13 of the Act. By the time, complainant could be filed even this opportunity had passed. If the Petitioner Company was little more sensitive or alert to the complaint of the Respondent/Complainant, this situation might not have arisen. Petitioner has to pay for his insensitivity. The Respondent/Complainant led evidence of State's agricultural authorities in support who made their statements after seeing the crop in the field. The onus passes on to the Petitioner to prove that the crop which grew in the field of the complainant was of 'Arkajyothi' of which the seed was sold and not of 'Sugar Baby', as alleged. He cannot take shelter u/s 13 of the CP Act. Learned Counsel's plea that Respondent/Complainant should have kept portion of seeds purchased by him to be used for sampling purposes, is not only unsustainable in law but to say the least, is very unbecoming of a leading Public Sector Seed Company to expect this arrangement.

In the second case, the National Commission took cognizance of the objection raised by the Appellant that the procedure prescribed u/s 13 of the Consumer Act had not been followed and observed:

Testimony of the complainant would show that whatever seed was purchased from Respondent No. 2 was sown by him in the land. Thus, there was no occasion for complainant to have sent the sample of seed for testing to the laboratory. It is in the deposition of Jagadish Gauda that after testing the seed the Petitioner company packed and sent it to the market. However, the testing report of the disputed seed has not been filed. Since Petitioner company is engaged in business of sunflower seed on large scale, it must be having the seed of the lot which was sold to complainant. In order to prove that the seed sold to complainant was not sub-standard/defective, the Petitioner company could have sent the sample for testing to the laboratory which it failed to do. Thus, no adverse inference can be drawn against complainant on ground of his having not sent the sample of seed for testing to a laboratory.

In the third case, the National Commission held:

Holding in favour of the complainant, the National Commission stated that, 'it is not expected from every buyer of the seeds to set apart some quantity of seeds for testing on the presumption that seeds would be defective and he would be called upon to prove the same through laboratory testing. On the other hand a senior officer of the Government had visited the field and inspected the crop and given report under his hand and seal, clearly certifying that the seeds were defective.

39. The reasons assigned by the National Commission in the aforementioned three cases are similar to the reasons assigned by the State Commission which were approved by this Court in *Maharashtra Hybrid Seeds Company Ltd. v. Alavalapati Chandra Reddy* (supra) and in our view the proposition laid down in those cases represent the correct legal position.

40. In the result, the appeals are dismissed. The Appellant shall pay cost of Rs. 25,000/- to each of the Respondents. The amount of cost shall be paid within a period of 60 days from today.