

(2013) 01 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Sankarankutty P.

APPELLANT

Vs

Development Officer, Rubber Board Regional Office

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : 2013 2 CPJ 193

Hon'ble Judges : SURESH CHANDRA J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition challenges order dated 16.7.2012 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram ("the State Commission" for short) by which the State Commission dismissed the appeal filed by the petitioner. The factual matrix of this case are that the petitioner -complainant purchased 190 rubber stems from the respondent - opposite party on 31.7.1991 for Rs. 617,50 on a subsidized rate. According to the petitioner, the stems did not grow and the petitioner lost everything in the process. Since the petitioner was not familiar with the rubber plantation, he could not understand the quality of the rubber stems supplied to him by the respondent. Out of the 190 stems; very few had sprouted but those few also did not grow. This was brought to the notice of the Field Officer as well as the Development Officer of the Rubber Board. However, in spite of information of the damage suffered by the petitioner, the respondent Board did not return the expenses incurred by the petitioner for the rubber stems in question and hence the petitioner filed a complaint claiming the cost of the rubber stems, with interest @ 15% and Rs. 500 as compensation.

2. ON notice, the respondent -OP contested the complaint. It, was submitted by the OP that as per his own admission, the petitioner was not familiar with the cultivation of the rubber and was ignorant about it. It was submitted that except the petitioner, the other 27 rubber farmers who had taken the rubber stems, there was no complaint from them. Regarding the allegation that the rubber stems were not of good quality, it was contended that the complaint in question

was lodged only after one year and no expert inspected his cultivation or any report was filed by him regarding cultivation. It was also submitted by the OP that the petitioner being ignorant about the rubber plantation, he did not take proper care of the purchased stems and they were not planted in the pits having necessary depth and size. It was also stated by the OP that the pits were waterlogged and hence the stems did not sprout. Denying any deficiency on its part the respondent prayed for dismissal of the complaint. The District Forum vide its order dated 2.11.2011 in Complaint No. 247/1993 partly allowed the complaint by directing the respondent to return Rs. 617.50 to the petitioner and to pay Rs. 2,000 as compensation along with costs of Rs. 300 within one month from the date of the order. Not satisfied with the order of the District Forum, the petitioner carried the matter to the State Commission by filing an appeal for additional compensation. As stated above, First Appeal of the petitioner was dismissed by the State Commission vide its impugned order which is now under challenge through the present revision petition. We have heard the petitioner who has appeared in person

3. It is to be noted that initially the complaint was filed by the petitioner on 19.4.1993 before the District Forum claiming the cost of rubber, (which was Rs. 617.50) with interest @ 15% and Rs. 500 as compensation. However, later on when in the first round of litigation before the State Commission the matter was remanded by the State Commission for fresh disposal after giving opportunity to both the parties to adduce evidence on the disputed issue whether the stems supplied were defective, the petitioner filed an amendment application dated 7.8.2008 for amending the complaint for loss of production of Rs. 49/54930. On remand, though the amendment application was allowed by the District Forum, a compensation only of Rs. 2,000 besides the return of the cost of the rubber stems amounting to Rs. 617.50 along with litigation cost of Rs. 300 were allowed by the order dated 2.11.2011 by the District Forum (as indicated above). We find that the State Commission while upholding the said order of the District Forum and dismissing the appeal of the petitioner has recorded the following reasons in support of the impugned order: 7. The Counsel for the respondent submitted that the rubber stems were given to the farmers at Government subsidized rate by the Rubber Board. The plants were of good quality and it does not carry any warranty for the plants as the growth of the plants differ due to the cultivation and climatic conditions. He also submitted that the growth of the plants depends on natural situation and also based on the proper nursing of the plant. The facts being so, it is not proper for the Forum below to fasten any liability on the opposite party, who are only a mediator. It is also argued that the Forum below ought to have dismissed the complaint in limine as the complaint is not sustainable. Submitting that there is absolutely no deficiency in service on the part of the opposite parties, the learned Counsel argued that the complainant was not a traditional rubber planter and in his complaint itself he conceded that he was unaware of the plantation of the rubber stems. It is also pointed out that he approached the opposite party 3 months after planting the stems and by that

time the sprouts were damaged. Further the respondent was provided with 190 plants in subsidized rate again in the next year. The additional claim, made by the complainant was only after the case was remanded from the State Commission to adduce evidence for the opposite party. The amendment petition was filed only after 7 years. The Counsel submitted that the additional claim has no legal stand at the stage of remand as the claim was barred by limitation and there cannot be any claim on the ground that the petitioner planted Koodathai in the same place. The additional claim is only an imaginary loss of production which is not supported with any substantiating evidence. There is no case for the appellant that he had produced any expert opinion regarding the loss of rubber stems.

8. On an appreciation of the arguments advanced by the appellant and the learned Counsel for the respondent and also on going through the records we are of the view that the appellant/complainant could not substantiate proper evidence to show the loss of production that would have incurred in the rubber plantation for 1 year. Merely giving the details in the publication and the market value could not be considered as the criteria for the assessment of loss of production of the rubber stems that would have grown and had assured yield in the future. The absence of any scientific criteria for the assessment of loss of production, we are not in a position to consider the claim of the compensation to the complainant. As there is no appeal preferred by the opposite party/respondent we are not disturbing the order passed by the Forum below and uphold the order.

In the result, appeal is dismissed. Parties are to suffer their respective costs.

We agree with the view taken by the State Commission and in the given facts and circumstances, we do not see any reason to interfere with the order of the State Commission. Consequently, the revision petition stands dismissed at the threshold with no order as to costs.