
(2015) 05 NCDRC CK 0103

In the National Consumer Disputes Redressal Commission

Case No : 2742 of 2014

SEED WORKS INTERNATIONAL PVT. LTD. & ANR.

APPELLANT

Vs

Nampelly Sudhakar & Ors.

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 2(i)
(r) - Definitions

Citation : 2015 2 CPJ 587

Hon'ble Judges : D.K. Jain, Vinay Kumar, M. Shreesha

**Advocate : Sumanth Nookala, K. Srinivas Reddy, Suyodhan Byrapaneni, G.
Rajendra Prasad**

Judgement

1. In the impugned order, Andhra Pradesh Consumer Disputes Redressal Commission has dismissed 97 appeals filed by a producer of hybrid cotton seed, Seed Works International Pvt. Ltd. and some of its dealers, who marketed its seed in Andhra Pradesh in 2010. In all 97 revision petitions were filed against the impugned order. At the initial stage itself, this Commission took the view that respondent/farmers who had sown this seed in less than one acre and have been awarded compensation below Rs.30,000/-, have already suffered considerable harassment, in addition to the loss of their crop. Therefore, no notices were issued to them. In their cases, the concerned revision petitions are deemed to have been dismissed. 60 cases fall in this category. In the other 36 cases now listed before us, the revision petitions are being decided after hearing both sides.

2. As per the Consumer Complaints filed before the District Forum Warangal, the Complainant was a farmer with over 10 year experience in cotton cultivation and had achieved yield levels of 12 quintals per acre. In April/May 2010 he had purchased two packets of OBAMA BG II variety of cotton seeds for kharif crop of 2010. Allegedly, before the purchase, he had been assured by the dealer that the seed would give yield levels of 15 to 18 quintals per acre. But, he found that germination of was only about 60%, despite sufficient irrigation as well as application of fertilizer and pesticide. Contrary to assurances, germination of the

seeds was very low and there was poor formation of flower and boll. ("Bolls" are rounded seed capsules of plants like cotton and flax.) Significantly, the petition also claimed that: "It is to humbly submit that the Complainant was purchased one packet of Neeraja and one Packet Dr. Brunt Hybrid Cotton Seed of MICO COMPANY in the month of June, 2010 and the same was sowed in Ac. 2-00 of land of the Complainant and the yield was come up to 10-12 quintals, but due to the defective Seeds of OBAMA BG II Hybrid Cotton Seed supplied by the opposite party No.1 and No.2 the Complainant lost 10 Quintal of the Cotton Crop for each one acre."

3. On receiving no meaningful response from OPs, the Complainants sought intervention of the Agriculture department of the government. The Joint Director, Agriculture, Warangal sent a team of district level officers of the department. This Committee, headed by Dr Gopinath, gave its reports on 25.9.2010 and 10.11.2010.

4. Per contra, the stand of the OPs in the Written Statement filed before the District Forum was that there was no defect in the seeds sold to the complainants. It was claimed that before release in the open market, the seed had been subjected to stringent tests regarding its purity, germination etc. According to the written statement of the OPs securing of optimal yield depends upon various factors like weather, soil type, plant formation, fertilizers, micronutrients as well as incidence of pests and diseases attack.

5. It will be seen from averments in the written statement that the OPs have sought to rely very heavily on the report of Dr. M.Gopinath, the then Principal Scientist (Cotton Breeding) RARS, Warangal in support of their claim that the cause of damage to the crop was continuous rainfall in October, 2010 and heavy attack of Jassid. It is claimed that: "In all the cases the genetic purity was observed to be 95-98%, irrespective of the hybrid and seed company. Before concluding, we may have to recapitulate the unusual weather conditions that are continuing to prevail during 2010-11 crop season. As per the rain fall data recorded at RARS, Warangal a total rainfall of 731.8 mm was received in 46 rainy days from July to October 2010. Almost every alternate day it is raining during July, August September and October months. This has resulted in continuous wet soil condition. In addition the incidence of jassids (Green Leaf hopper) was unabated, occurring above economic threshold level (ETL) in several broods (generations). Most of the farmers have relied on imidacloprid and its variants. Sucking pests have developed resistance to imidacloprid. On the other hand, farmer could spray only 2-3 times to control jassids, which was insufficient. To control overlapping broods of jassids 6-8 rounds of spray is necessitated during 2010-11 season. Another aspect that might have reduced the efficacy of spray fluid was intermittent rains and subsequent wash off of the continuous wet soils conditions has resulted in shedding of floral parts and tender bolls, which was aggravated by heavy incidence of sucking pests, particularly jassids, above ETL in overlapping broods.

As a result the crop growth has been stunted, all the leaves become thick, leathery, downward curling into an inverted cup shape, yellowing, turning into brick red with severe jassid injury. The shedding of squares, flower and tender bolls have resulted in barren plants with 5-10 bolls/plant only."

"It is further submitted that the report dt. 10-11-2010 of Dr. M. Gopinath, the Principal Scientist (Cotton Breeding) RARS, Warangal clearly reveals that the genetic purity was observed to be 95-98% irrespective of the Hybrid and Seed Company. It was further stated that there was a total rain fall of 731.8 mm. was received in 46 rainy days from July to October 2010 and that almost every alternative day it was raining which resulted in continuous wet soil conditions. He further reported that the incidence of Jassids (Green Leaf Hopper) was unabated occurring above economic threshold level in several broods (generations). He further stated that sucking pests have developed resistance to imidacloprid pesticide and that the farmer could spray only 2-3 times to control Jassids, which was insufficient. He further reported that to control over lapping broods of Jassids 6-8 rounds of Spray was necessitated during 2010-2011 season. He also stated that the efficacy of the spray fluid was reduced due to intermittent rains and subsequent wash off of the insecticide before it was absorbed by the plant and become effective. Continuous wet soil conditions resulted in shedding of floral parts and tender bolls which was aggregated heavy incidence of sucking pests, particularly jassids, above ETL in over lapping broods. As a result the crop growth has been stunted, all the leaves become thick, leathery, downward curling into an inverted cup-shape, yellowing and turning into brick red with severe jassids injury. The shedding off squares, flower and tender bolls have resulted in barren plants with 5-10 bolls/plant only. Thus from the above report of Dr. M. Gopinath, there was no defect in the seed and on the other hand, the genetic purity of the seed was 95-98%."

6. The core of the findings arrived at by the District Forum is that:- The main contention of the OPs that the yield was low, not because of defective seed supplied by the Opposite Parties but because of failure of the Complainants to follow proper management of the crop, has been rejected on the ground that no documentary evidence was adduced on behalf of the OPs in this behalf. It held that no evidence was led to show that the actual rainfall of August and September, 2010 was heavy.

The report of Dr. Gopinath itself shows that cotton hybrid crops, which are hairy e.g. Neerja, Kanak and Dr. Brunt are inherently resistant to jassids (Green Crop Hopper). Pamphlets issued by OPs claimed that the OBAMA seed was highly resistant to jassids and could withstand heavy rainfall. The Complainants have acted on this assurance.

7. The District Forum therefore, awarded compensation on the basis of loss of 8 quintals of production per acre, taking its value at Rs.3000/- per quintals. Thus, OPs were held liable to pay Rs.24,000/- per acre of crop raised with this seed.

8. All 97 appeals filed by the OPs, against the above order of the District Forum, have been dismissed by AP State Consumer Disputes Redressal Commission in a common order passed on 1.5.2014. Commenting on the report of Dr. Gopinath, on which the defence of the OPs had substantially been founded, the State Commission has observed that it is neither helpful to the complainant nor to the opposite parties as it has not specifically mentioned whether the loss of yield was on account of defective seed or for want of measures that were required to be taken by the complainant. The State Commission has also rejected the certification of genetic purity of the order of 95-98% in the report of Dr. Gopinath, as it does not explain how it was arrived at. The State Commission relied upon decision of the Hon'ble Supreme Court in M/s. National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy, AIR 2012 SC 1160 and held that the farmer alone could not be held liable for not getting the seed tested. Nothing prevented OP-2 from producing the same before the District Forum and from seeking its quality testing. The complainants could establish that there was loss of recovery in the crop. Therefore, the onus was on the OPs to prove that the seed used in production of the crop did not suffer from any defect, especially when other varieties of seed supplied by other companies in the same region could fetch good yields.

9. Therefore, the impugned order says? "The only question is whether the loss of crop is attributable to defective seeds supplied by the Opposite Parties/appellants. The complainants could establish that there was crop loss but the appellants/Opposite Parties failed rebut the evidence by showing the data of yield obtained by other farmers who had used the same variety of hybrid seed during the said season. The onus is on the appellants to prove that the seeds supplied by them do not suffer from any defect especially when other varieties of seeds of other companies could fetch good yield in the same region relating to same crop season. The manufacturer did not send the seeds that were released to the market under the said batch in order to prove that the seeds were not of inferior in quality. It did not even file the government recognized laboratory test reports that were conducted before releasing the seeds to the market. The question in regard to nature of land, irrigation facilities etc., were of general nature. The Scientist did not state that the lands were not suitable for raising cotton crop. The very fact that when other companies hybrid cotton seeds are highly resistant to pests as observed by the Scientist, an adverse inference can be drawn that there was deficiency in the seeds supplied by the appellants. There could not have

been total loss of crop for all these agriculturists had seeds been in conformity with the specifications. We have absolutely no hesitation to hold that the crops were failed due to defective seeds. The complainants have proved by leading irrefutable documentary evidence that they have sustained loss in view of defect in the seeds."

10. We have carefully considered the records as submitted in these Revision

Petitions. Mr.Sumanth Nookala, Advocate has been heard on behalf of the Revision Petitioners and Mr. Suyodhan Byrapaneni, Advocate on behalf of the Respondents/Complainants. We have also heard learned Senior Advocate, Mr. H. Ahmadi, on behalf of the petitioners.

11. The main ground of the revision petitioners is that when the genetic purity of the seed was of the order of 95-98%, fora below could not have held it to be an inferior quality of seed. According to the Petitioner, under the notification of Ministry of Agriculture dated 28.12.1993 genetic purity of 90% would be considered sufficient. The Revision Petition does not explain why actual germination was only about 60%, if the genetic purity was as high as claimed. While, no acceptable explanation has been offered on behalf of the Petitioners, learned counsel for the Respondents/ Complainants explained that the claim of genetic purity itself emanates from self certification by OP-2. He also referred to the relevant provisions in the Andhra Pradesh Act, No.29 of 2007, which deals with regulation of supply, distribution, sale and price of cotton seed. Section 6 therein clearly lays down that the testing should be done in a notified State Seeds Testing Laboratory or any other notified government/non-government laboratory. The RPs/OPs have not pointed to any independent testing agency which gave the certification of 95-98% purity of seed.

12. Revision Petitioners have also argued that the finding of the State Commission that the report of Dr. Gopinath did not help the case of either side, was perverse as his report carries a definite opinion of Dr. Gopinath that heavy rainfall and ineffective pest control measures were the cause of the crop failure. We are unable to accept this argument, as it is factually incorrect. It is clear from the orders of the fora below that the District Forum and State Commission have both reached their findings independently of report of Dr. Gopinath. We find it necessary to observe that this expert report suffers from a serious flaw. It makes repeated claims about genetic purity of 95-98% without clarifying the source of such tests and certification. The report does not explain why the actual germination was only 60% as against the claimed certification of 95%. Reliance is primarily placed on damage to the crops by heavy rainfall of July, August and September and the resultant infestation of Jassid. Dr. Gopinath, being an Agricultural Scientist should have appreciated that in the same year and under the same weather conditions crop raised with other varieties of cotton seeds such as Neeraj, Dr. Brunt and Mahyco have given good yields. His study and report should therefore, have gone deeper into the reasons for failure of the crop raised with OBAMA BG-II variety in the fields of the complainant. Blaming the crop failure on the rain conditions and pest attack, coming as it does from an agricultural scientist, cannot be accepted. We therefore, find ourselves in complete agreement with the fora below on the merits of the report of Dr Gopinath.

13. The Revision Petitions contend that six to eight rounds of pesticides spray were required, while the complainants had sprayed only two to three times. But,

there is no explanation whether six to eight sprays were recommended by the OPs while selling the seed, as they were well aware that this seed was going to be used in the State of Andhra Pradesh for the first time. The District Forum has categorically observed that no evidence was placed before it to show that the complainants were suitably cautioned or advised by the OPs. The

Revision Petitions too do not bring out any evidence to the contrary. This claim is therefore rejected.

14. It was further argued on behalf of the Revision Petitioners that the finding of failure of seed has been reached by the fora below without obtaining independent assessment as per the requirement of Section 13 of the Consumer Protection Act. On this issue, earlier in this order, we have referred to the decision of the Hon'ble Supreme Court of India in *National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy*, 2012 (2) SCC 506, it was observed that the farmer cannot be expected to preserve a portion of the seeds for testing under Section 13. We may note that, even prior to this decision, the National Commission had in *National Seeds Corporation Ltd. Vs. Guruswami and anr*, 2001 CTJ 733 (CP) (NCDRC) expressed a very similar sentiment. It had observed that:- "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 under Section 13(c) of the CP Act."

Similarly, in the present revision petitions, nothing stopped the OPs from applying for the test and analysis and sending the requisite sample on their own. But, no application was made before the District Forum for such a test. We find ourselves in complete agreement with the fora below that nothing prevented the RPs/OPs from making such a prayer before the District Forum and seeking independent third party assessment of the quality of their seed. Therefore, this argument is rejected.

15. Learned counsel for the Revision Petitioners repeatedly stressed that the petitioners never claimed that their seed was resistant to jassids and tolerant to heavy rain. In our view, this amounts to begging the question. It is not the case of the petitioners that heavy rain and resultant pests attack in cotton crop in the year 2010 was an agro climatic aberration. Therefore, there should be no question of selling seed, which is developed and marketed in disregard of the local agricultural cropping conditions. More importantly, if the seed was vulnerable to jassids infestation, there is nothing on record to show that the farmers were forewarned about it. Failure to do so would clearly bring the conduct of the RPs/OPs within the ambit of an unfair trade practice as defined in Section 2(i) (r) of the Consumer Protection Act, 1986.

16. In conclusion, we find no merit in these revision petitions. Consequently, they are dismissed and the common order of the AP State Consumer Disputes Redressal Commission in First Appeal Nos. No.882-978 of 2013 is confirmed. However, before parting with the matter we deem it necessary to observe that dismissal of these revision petitions will not result in closure of a much larger issue involved therein. Even after the complainant farmers have received the compensation awarded in these proceedings, the need to protect them and other similarly placed farmers, from such risk in the future, shall continue to be an area requiring serious concern, attention and action. We therefore direct that a copy of this order should be sent to the Chief Secretary, Government of Telangana to initiate preventive measures.