
(2011) 04 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd.

APPELLANT

Vs

J.V.S. Food Pvt. Ltd

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : 2011 0 NCDRC 234

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THIS Revision Petition has been filed against the order of Rajasthan Consumer Disputes Redressal Commission in Appeal No.845/2008. The Revision Petitioner/ United India Assurance Co. has prayed that the impugned order should be set aside. In the impugned order, the State Commission has come to a conclusion that the consignment of Fortified Corn Soya Blend Flour exported by the Respondent JVS Food Pvt. Ltd. to Cambodia, had got infested due to insect name Tribolium Castaneum during transit from India to Cambodia. Therefore, the Complainant was entitled to get an amount of Rs.6,14,883/- which he had to spend to make the consignment fit for consumption.

2. THIS order of the Rajasthan State Consumer Disputes Redressal Commission is challenged by the Revision Petitioner, primarily on the grounds that " (i) The State Commission has allowed additional evidence to be produced before it in the form of report of the Deputy Director of Agriculture. THIS report itself is of May, 2009 i.e. nearly four years after the goods were dispatched in July, 2005. Therefore, the report could not have been based on inspection of the goods in question. (ii) State Commission has not given any ground for discarding the Surveyor's Report, which is an important document.

We have heard Sri K.L.Nandwani, counsel for the Revision Petitioner and the counsel for the Respondent/Complainant as well as perused the records of the case.

The facts, in very brief, are that 900 MT of Fortified Corn Soya Blend flour in

36,000 bags was exported from Jaipur to Cambodia in July, 2005. Before shipment from India, the consignment was delayed at Mumbai for about a month, due to heavy rain. The goods arrived in Cambodia in mid September, 2005, after about 45 days. A few days later, when the goods were unloaded in the warehouse in Cambodia, the contents were found infested by these worms. As we have already noted, the Complainant had to incur an expenditure of Rs.614883/- for making the infested consignment fit for consumption.

3. HIS claim for payment of this expenditure under the policy, was repudiated by the RP/Insurance Company on 15.6.2006, on the basis of the report of the M/s. Eurogal Surveys, Cambodia. The Surveyor came to the conclusion that:- "4.4. Fumigation will exterminate worms, grubs and adult bugs but does not affect unhatched eggs that were present in the flour. In our opinion these eggs hatched into worms during the course of the transport and the worms grew into adult bugs starting new generations of infestation inside the bags. 4.5. Accordingly we are of the opinion that the infestation was the result of the presence of the vermin in the goods prior to shipment and was not the result of any external cause during the transport."

This report and repudiation based thereon, was accepted by the District Forum, which dismissed the Consumer Complaint. However, when the matter went to the State Commission in appeal, the finding of the District Forum was not found acceptable.

4. THE State Commission has taken into consideration the test reports of independent agencies, which show that the consignment of Corn Soya Blend Flour was duly fumigated and disinfested before being sent to Cambodia. THE State Commission, therefore, concluded that the consignment was free from any insects at the time of sending. However, heavy rain at the port and detention of stocks, for nearly a month, may have allowed the insects *Tribolium Castaneum* to have developed during transit. In our view, the finding of M/s. Eurogal Surveys in paras 4.4 and 4.5 of their report on the cause of damage need to be seen in the background of the complete report and not in isolation. The consignment of 36,000 bags was delivered in Phnom Penh on 20.9.2005 (para1.2). The Surveys examined 15 bags, selected at random, out of the total of the 36,000 (para 2.8). In the para dealing with fumigation of the cargo, the report of M/s. Eurogal Surveys (para 5) says:- " There is no production certificate from the manufacturers. The quantity for WFP shipment would take a considerable amount of time for production. The fumigation was done after cargoes were inspected and prior to dispatch of the shipment. From the date of fumigation on 03/08/05, to the date of arrival at the port of destination, Sihanoukville on 16/09/05, a total of 44 days elapsed. According to the reports of the tests conducted by SGS concerning sustention food and mesophilic bacterial count, the sample quantity tested was 1,500 grams out of a total quantity of 900,000 kilograms. The certificate of inspection issued by Delhi Test House did not indicate bacteria and/or insects. The small quantity tested by SGS

was insufficient to ensure that the entire quantity was free of bacteria and/or vermin. The period of transit from the time the cargo was on board the carrying vessel on 24/08/05 until arrival at Sihanoukville port on 16/08/05, was 24 days and after discharge from the carrying vessel the cargo was stored in Sihanoukville port for 4 days prior to delivery to Consignees" warehouse. If the containers had been properly cleaned and fumigated prior to stuffing, there should not have been any residual life forms inside them from previous cargoes or previous infestations, however, if there had been un-hatched eggs in the un-inspected part of the cargo there would have been enough time for them to hatch, develop into adult bugs and to begin a new reproductive cycle producing subsequent generations of eggs and worms during the period of transit."

It will be seen from the above observations that M/s. Eurogal Surveys have accepted that certification by Delhi Test House did not indicate any bacteria or insect. However, this acceptance has been qualified by a comment that only a small quantity was tested by SDS. By the same logic, the conclusion of pre-dispatch infestation, drawn by the Surveyor Eurogal, becomes questionable due to small size of the sample studied viz. 15 bags out of total 36,000 in the consignment. During the course of the arguments, learned counsel for the Revision Petitioner merely relied on the report of M/s. Eurogal without any explanation for the above.

5. IN addition two phytosanitary certificates dated 3.8.2005 and 11.8.2005 issued by Dy. Director Govt. of INdia Ministry of Agriculture, which are at pages 23 and 24 of Vol. I of record of Revision Petition reads as under:- "This is to certify that the plants or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests and practically free from the injurious pests and that they are considered to conform to the current phytosanitary regulations at the importing country."

6. THE Revision Petitioner has also objected to the acceptance of the report of Deputy Director Agriculture by the State Commission, on the ground that this report is of 26.5.2009 when the shipment had taken place nearly four years earlier, in July, 2005. This objection has no substance as the report of the Deputy Director Agriculture Jodhpur, is in the nature of an expert-report on the process involved and not on the quality of this specific consignment. It is significant in the following comment which explains the process of production:- "Blending process Corn Soya involves high temperature of 160 degree Celsius for 45 seconds stored grain pest *Tribolium Caustanm* and its all developing stages like eggs, larvae and pupae cannot sustain or survive in such high temperature." This shows that the conclusion of M/s. Eurogal that: "if there had been unhatched eggs in the un-inspected part of the cargo there would have been enough time for them to hatch, develop into adult bugs and to begin a new reproductive cycle producing subsequent generations of eggs and worms during the period of transit.", is a mere surmise, not scientifically supported by the process involved

in production of Corn Soya Flour. Nor has the Revision Petitioner produced any specific or direct evidence in support of the above inference drawn by M/s. Eurogal.

In view of the above, we agree with the conclusion of the State Commission that the presence of Tribolium Castaneum in the consignment cannot be taken as prior to shipment of the consignment. We therefore agree with the conclusion that the Insurance Company was not justified in repudiation of the claim.

7. FOR the reasons detailed above, the Revision Petition is dismissed as devoid of any merit and the order of the State Commission confirmed. The Complainant/Respondent shall be allowed to withdraw the amount deposited with the District FORum in terms of order dated 16.8.2010 and statement of counsel for the petitioner recorded in order dated 15.11.2010. FOR the balance of amount, the Respondent/Complainant may make an application to the District FORum Jaipur-I.