

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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VOLUME – XXXVI

FEBRUARY 2024

ADVANTAGE - II

Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Sugarcane farmers provided relief for the damage of crops due to fire caused by overhead electrical cables.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2479 OF 2016

(Against the Order dated 05/05/2016 in Appeal No. 302/2015 of the State Commission Maharashtra)

CHANDRAKALA BHAUSAHEB KOHOK
R/O. GOGALGAON, SALABATPUR GOGALGAONCHE TQ.
NAWASA,
DISTRICT-AHMEDNGAR
MAHARASHTRA

.....Petitioner(s)

Versus

1. EXECUTIVE ENGINEER, MAHARASHTRA STATE
ELECTRICAL DISTRIBUTION COMPANY LIMITED & ANR.
RURAL DIV. STATION ROAD,
DISTRICT-AHMEDNAGAR
MAHARASHTRA
2. ASST. ENGINEER,
MAHARASHTRA STATE ELECTRICAL DISTRIBUTION
COMPANY LIMITED, NEAWASA TQ. NEAWASA,
DISTRICT-AHMEDNAGAR
MAHARASHTRA

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER

Dated : 20 Feb 2023

ORDER

PER HON'BLE MR. SUBHASH CHANDRA

1. These Revision Petitions under Section 21 (b) of the Consumer Protection Act, 1986 (in short, 'The Act') assail the order dated 05.05.2016 passed by State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Aurangabad (in short, 'State Commission) in First Appeals No. 302/2015, 613/2015 & 303/2015. As the facts of the case are similar and the appeal is against the same order, for the sake of convenience, the facts are taken from R.P. No. 2497 of 2016.

3. The brief facts of the case, as stated by the petitioner, are that he is an agriculturist owing 3 acres of irrigated land in Gut No. 59/2B in Village Gogalgaon, Tq. Newasa, Dist. Ahmadnagar. The petitioner has been cultivating sugarcane and supplying the same to the Ganga Mai Sugar Factory, District Ahmadnagar. The land is irrigated by a pump in a well located on his land which also supplies water to the adjoining lands of members of his joint family, who were petitioners in R.P. Nos. 2479/2016 and 2480 of 2016. The petitioner has stated that during the agriculture season of 2014-15, he had incurred an expenditure of Rs.2,83,950/- in cultivating the sugarcane crop which was valued at Rs.8,59,950/- for an expected yield on 240 tons at the then prevailing rate of Rs.2,400/- per ton. However, on 15.10.2014, at around 3.30 p.m., the electric wires of the Low Tension (LT) line of the respondent (MSEDCL) which passed about 8 to 9 feet above his land came in contact with each other due to strong wind causing sparks due to short circuit which resulted in the crop of sugarcane catching fire and spreading to the adjoining fields. The local Revenue authority (Tahsildar, Newasa) was informed, and an FIR lodged at the local police station which registered the FIR as an accidental fire case no. 14/2014. The Electrical Inspector of the respondent also visited the spot and submitted a report dated 13.11.2014 as per which it was concluded that the fire was due to short circuit on account of LT wires coming into contact with each other and resulting in sparks falling on the crops leading to fire which was spread by strong wind. As the pump in the well located on the land of the petitioner is energized by the opposite party, and he had been complaining to the opposite party to rectify the loose LT wires, the petitioner filed a consumer complaint no. 522 of 2014 before the District Forum seeking to be compensated for the loss incurred since the sugarcane crop was not accepted by the sugar factory.

4. Respondents herein remained unrepresented despite notice before the District Forum which, vide order dated 17.04.2015, upheld the complaint and directed as under:

1. The opponents no. 1 & 2 are directed to pay the compensation of Rs.2,00,000/- (two lakhs only) to the complainant' and the interest thereupon of 6% p.a. from date of burning of the crop till its realization of the amount.

2. The opponents no. 1 & 2 are directed to pay Rs.3000/- each towards loss occurred and expenses of the present complaint to the complainant.

5. The petitioner Chandrakala (RP no.2479 of 2016) filed an appeal before the State Commission seeking wrongly dismissal of the complaint which requires to be allowed by setting aside the impugned order which came to be disposed of on 05.05.2016. The other two complaints be awarded the amount of compensation as per prayer made by them in complaints by modifying the impugned. While the District Forum had held that the complainant was a consumer of the MSEDCL, concluded that there was deficiency in service on the part of the MSEDCL, and therefore they were entitled to receive compensation as sought, the State Commission considered it appropriate to allow compensation of loss only to the extent of 25% since it assessed that the actual loss due to burning of sugar cane crop was only 20-25% of the total income. The State Commission also held that the petitioner informed the sugarcane factory after nearly two months and therefore the sugarcane factory declined to accept the damaged sugarcane. Holding the petitioner to be negligent in taking timely action, the State Commission held that complainants were entitled to receive compensation only to the extent of 25% of the total expected income. Considering the expected yield at 60 tons per acre and the rate per ton for the sugarcane of Rs.2,000/-, the State Commission had then proceeded to consider the petitioner entitled to Rs.90,000/- compensation for 3 acres of land cultivated by him. In addition, it awarded interest @ 6% p.a. from the date of filing of the complaint (23.12.2014) till the realization of the entire amount along with Rs.3,000/- for mental agony and Rs.3,000/- as the cost of the complaint. This order is impugned before us on the grounds that the opposite party was squarely responsible for the loss incurred and that the compensation awarded by the State Commission was far less than what the petitioner was entitled to.

6. The respondent has contended that the petitioner is not a consumer qua the respondent as there is no relationship of a service provider with him and has relied upon the orders of this Commission in the case of *Haryana State Electricity Board Vs. Smt. Ganga Devi* 1997 (1) CPR 20 (NC) and *Haryana State Electricity Board Vs. Rattan Lal* 3 (2002) CPJ 138 (NC). It is contended that there has been no deficiency in service and the petitioner is, therefore, not entitled to any compensation. It is contended that neither the Padmashri Dr VithalraoVikhe Patil Sugar Factory nor Gangamai Sugar Factory accepted the burnt sugarcane as it was offered to them after two months. It is also argued that no valid documents have been filed by the petitioner including the revenue records and therefore, the revision petition deserves to be dismissed.

7. We have heard the petitioner in person and learned counsel for the respondent and carefully considered the material on record.

8. From the record it is seen that petitioner had energized his irrigation pump with a connection with MSEDCL. In view of the fact that the petitioner's well had a pump that was operated by electric supply by the respondent, the respondent's assertion that the petitioner was not a consumer of the opposite party cannot be sustained. The report of the Electric Inspector deputed on behalf of the opposite party clearly states that the cause of fire was on account of spark consequent to short circuit due to coming into contact of the loose LT wires passing over the land of the petitioner. There is therefore, a clear establishment of liability on the respondent for the cause of the fire and deficiency in service.

9. In the present case both the fora below have arrived at concurrent findings on the fact of the case of fire and the attribution of responsibility on the opposite party for the same. This Commission has limited revisional jurisdiction under the Act when the fora below have given concurrent findings on the facts of case as held by Hon'ble Supreme Court in the case of *Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd.*, (2011) 11 SCC 269 as under:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."

11. The only issue in the revision petition before us is the quantum of compensation which has been awarded by the State Commission which has been argued by the petitioner to be erroneously worked out. The State Commission has considered eligibility of only 25% of the sugarcane price at a reduced yield per acre and cost per ton on the ground that the salvage value of burnt sugar cane commanded 25% value and the yield per acre and price per tonne of sugar cane was considered inflated. It was held that the petitioner delayed in presenting the salvaged sugarcane before the concerned sugarcane factory which would have accepted the same at the applicable rate for burnt sugar cane. There is no document on record to prove that this delay, if any, was deliberate or intentional. The curtailment of compensation for the sugarcane to 25% of expected yield at a lower rate per ton on the ground that the yield of 9.5% was not certified has not been justified on the basis of any document by the respondent. A farmer whose crop has been subjected to an unforeseen fire which confronted him with a calamitous predicament could not have been expected to act more prudently. From the facts of the case which are not disputed, the petitioner did make efforts to offer the sugarcane crop to two factories which rejected it. The State Commission has adopted the rationale of prevalent practice to calculate the compensation at 25% of the expected income from crop of sugar cane. The basis for adopting this approach "as per existing practice" whenever such incidence of fire to the sugar cane crop occurs cannot be sustained. The State Commission has presumed that such a crop fetch only 75% price but awarded only at 25% the reduced rate. The existing settled practice of sugar factories in respect of payment for damaged sugar cane which it is expected to accept on priority is to deduct 20 to 25% and pay the rest of the amount to the owner of the sugar cane crop. However, the State Commission has held that the complainant is entitled to receive compensation only to the extent of 25% of the amount of expected income. The rate of sugar cane has been taken at Rs.220/- per quintal or Rs.2200/- per tonnes for the year 2014-2015 which is linked to the basic recovery of 9.5% and the yield per acre at 60 tonnes. The State Commission has therefore, both reduced the yield, the rate per quintal or tonne as well as the basic price of the sugar cane. This is rather harsh and the order is perverse for this reason.

13. In view of the above, the order of the State Commission is liable to be set aside. Accordingly, the order dated 05.05.2016 in appeal no. 303 of 2015 is set aside and the order of the District Forum is upheld.

14. This order also disposes off revision petition nos. 2479 of 2016 and 2480 of 2016 in the above terms. ■

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Penalty on Bank confirmed for its negligence – Limited Revisional jurisdiction of National Commission clarified.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 489 OF 2016

(Against the Order dated 10/12/2015 in Appeal No. 562/2012 of the State Commission Tamil Nadu)

STATE BANK OF BIKANER AND JAIPUR
NO. 58, MUNICIPAL OFFICE ROAD,
TIRUPUR
TAMIL NADU

.....Petitioner(s)

Versus

1. S. PONNUSAMY & ANR.
PROPRIETOR, M/S S.P. TEX, S.F. NO. 730/1, NAVITHAN
THOTTAM THENNAMPALAYAM EAST
TIRUPUR-641604
TAMIL NADU

2. M/S NATIONAL INSURANCE CO. LTD.
REP. BY ITS DIVISIONAL MANAGER, 18, KUMKURAN ROAD,
COURT STREET,
TIRUPUR-641601
TAMIL NADU

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER

Dated : 16 Feb 2023

ORDER

Challenge in this Revision Petition filed by the Petitioner/Opposite Party No.2 in the Complaint, u/s 21(b) of the Consumer Protection Act 1986 (hereinafter to be referred to as "the Act") is to the Order dated 10.12.2015 passed by the State Consumer Disputes Redressal Commission, Tamil Nadu at Chennai (hereinafter to be referred to as "the State Commission") in First Appeal No. 562/2012. By the Impugned Order, the State Commission while affirming the Order dated 16.04.2012 passed by the District Consumer Disputes Redressal Forum, Coimbatore (hereinafter to be referred to as "the District Forum") in Consumer Complaint No. 227 of 2011 has dismissed the appeal filed by the Petitioner. The District Forum allowing the complaint filed by the Complainant/ Respondent No.1 herein had directed the Petitioner, State Bank of Bikaner and Jaipur (hereinafter to be referred to as the "Petitioner Bank") to pay a sum of Rs13,28,830/- to the Complainant towards the loss and damage suffered on account of fire accident along with Rs 50,000/- as compensation for mental agony. The Complaint was dismissed qua the Opposite Party No.1, i.e. National Insurance Company Ltd. (hereinafter to be referred to as the "Insurance Company")

02. Succinctly put the facts of the case as narrated in the Complaint are that the Complainant had availed of Credit Facilities from the Petitioner Bank in the year 2004 and soon after the Petitioner Bank had taken a Fire Insurance Policy from the Opposite Party No.1 Insurance Company on behalf of the Complainant covering the risk to the plant, machinery and stock lying at the Complainant's premises at D. No. 582/1, Karuppagoundanpalayam, Opp. Tamil Nadu Theatre, Tirupur. Subsequently, in the year 2006, the Complainant shifted their factory/manufacturing Unit and place of business to S.F. No.730/1, Navithan Thottam, Thennampalayam East, Tirupur – 641 604 which was duly informed to the Petitioner Bank by the Complainant and the Petitioner Bank continuously got renewed the policy on payment of the necessary premium to the Insurance Company.

03. During the currency of the Policy, on 24.06.2009, a fire broke out at 7:30 a.m. in the Complainant's factory and the accident was informed to the Insurance Company by the Complainant on the same very day. Upon intimation, the Insurance Company appointed a Surveyor to assess the loss suffered by the Complainant due to fire accident. The Surveyor visited the site and assessed the loss. Though the Complainant suffered the loss to the tune of Rs30,00,000/- but consented to receive only Rs16,00,000/-. However, vide letter dated 12.07.2010, the Insurance Company repudiated the claim of the Complainant on the ground that the insurance was taken covering the plant, machinery and stocks lying at 582/1, Karuppagoundanpalayam, Opp. Tirupur and the fire accident occurred at Navithan Thotam Tirupur which was not covered under the policy. Feeling aggrieved, the Complainant filed the Complaint before the District Forum.

04. The Complaint was contested by the Petitioner Bank on the ground that the information regarding change in address of the factory premises of the Complainant from D. No. 582/1, Karuppagoundanpalayam, Opp. Tamil Nadu Theatre, Tirupur to S.F. No.730/1, Navithan Thottam, Thennampalayam East, Tirupur – 641 604 was duly received by them and the same was also intimated to the Insurance Company. The Insurance Company visited the new premises and after inspection and due verification of the stocks and raw materials lying therein issued the policy. After the fire accident, the Insurance Company has sold the entire salvage but later on had refused to make the payment of the claim amount with malafide intention. The Insurance Company was well aware of the new address as only after carrying out the inspection of the stock, they were issuing the policy.

05. The Insurance Company resisted the Complaint by filing its Written Version and stating that the intimation regarding change in address in the factory premises of the Complainant was not given to them and as such the claim under the policy was not payable as held by the Hon'ble Supreme Court in catena of judgments.

06. After hearing both the parties and going through the material and evidence available on record, the District Forum allowed the Complaint by observing as under: "Hence, the Bank ought to have intimated the insurance and got endorsement in the insurance policy covering the stocks kept in the above address of the complainant. There is nothing on record to show that the Bank intimated the insurer in the manner expected of it.

Though the bank has stated in his written version that it has intimated the change of address of the complainant's premises he has not produced any letter or correspondence evidencing the above facts. Hence, we are unable to accept the Bank's version that it has intimated the insurance company, and the Insurer is bound to honour the claim of the complainant.

After the complainant's notice dt. 6.7.11 (Ex.A7) the Bank has requested the insurer to arrange for the payment of claim stating that due to clerical error the policy cover address mentioned is different from the actual address. In the above letter, the bank has stated as below: -

" We are in receipt of legal letter from the firm claiming the loss of stock on account of fire to the stock. It has been learnt that in the insurance policy cover address mentioned is different from what it is actually, due to clerical error occurred over the period of time.

However, as per our inspection record, (copy enclosed for your necessary action) it clearly states that the stocks are hold at SF No.730/1, Navithan Thottam, Thennampalayam, Tirupur 641 604. Therefore, given claim of firm is genuine, so you are requested to arrange for payment of claim as requested by them..."

For the above clerical error committed by the Bank and its officials, the complainant cannot be expected to suffer the loss as the insurance company has repudiated the claim on the ground that the premises where the stock was held was a different one than the one covered under the policy.

Along with the above letter, a copy of the inspection record of the bank has been enclosed. Relying on it an argument was put forth by the learned counsel for the bank that as per the inspection record of the bank, the stocks are held at the new premises of the complainant where the fire took place, and the insurer was well aware of it. Those documents, in no way, show that the bank has intimated the change of address of the complainant's premises holding the stock to the new place where the fire accident had taken place.

From the above, it stands established that the Bank has committed deficiency in service by failing to intimate the insurer about the change of location of the property of the complainant knowing fully well that the complainant has

shifted his (insured) stocks etc. to a new address ultimately leading to loss to the complainant as the insurer has repudiated the claim since the bank has not intimated the change of address and got necessary endorsement made in the insurance policy in this regard. The repudiations of the claim by the Insurance Company is justified as the premises where the stocks of the complainant were stored is not covered by the Policy of Insurance and there is violation of "Agreed Bank Clause" Bank contained in the terms and conditions of the Insurance Policy, by the Bank.

For the aforesaid reasons, we hold that the bank has committed deficiency in service and the complainant is entitled to have the loss compensated by the bank since it has happened only due to the Bank's negligence."

07. Dis-satisfied with the aforesaid Order, Petitioner Bank preferred First Appeal No. 562/2012 before the State Commission which was dismissed upholding the Order passed by the District Forum. The State Commission observed as under: -

" It is pertinent to note that in Ex.B7, which is the letter addressed by the 2nd opposite party bank to the 1st opposite party it has been stated that the new address / location of the new factory was recorded in their records and the same was not reported to the 1st opposite party due to clerical error occurred over a period of time.

It is quite significant to note that on one side, the 2nd opposite party bank/appellant would contend in their version that the intimation regarding the change of location/ shifting the factory from the previous address was duly received by them from the complainant, and it was recorded in their office registers, and the same was conveyed to the 1st opposite party and intimation was sent to the 1st opposite party. On the other side, as noted in Ex.B7, the 2nd opposite party/appellant has stated that intimation was not sent to the 1st opposite party due to clerical error in their office.

We find no materials on record to substantiate that the 2nd opposite party/appellant conveyed the change of address/ location of the complainant's factory premises to the new place, and therefore the contention of the 2nd opposite party/appellant that intimation was duly conveyed/reported to the 1st opposite party is untenable.

To be concluded in the next issue....

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Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7,Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of

'CONSUMER PROTECTION COUNCIL, ROURKELA'.
 For tariff and other details regarding advertisement, contact Editor.

Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003
 E.mail : bpradhan.cpckl@gmail.com
 (or) vaidya@advantageconsumer.com

**ADVANTAGE CONSUMER
 ENGLISH MONTHLY**



FEBRUARY 2024

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