

(1999) 07 NCDRC CK 0011

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SATYA DEVI

APPELLANT

Vs

RAKESH KUMAR SAWHNEY

RESPONDENT

Date of Decision: July 26, 1999

Citation: 1999 3 CPJ 328

Hon'ble Judges: T.S.Doabia , Arun Kumar Goel J.

Final Decision: Appeal dismissed

Judgement

1. THE appellant purchased cement for the purpose of construction of her house from Sawhney Cement Store, Jawahar Nagar, Rajouri. THE manufacturer of the Cement is located in the State of Rajasthan. It is carrying on the business in the name and style of M/s. Surabh Cement, 43 Grade, Jhalra Moonde (Rajasthan). So far as the State of Jammu and Kashmir is concerned, it is being distributed through M/s. Sohan Lal and Bros., Kali Bari Kathua and Vijay Kumar, Wholesale Dealer, ACC Cement, Sector 4, Railway Road, Nanak Nagar, Jammu. THE dealer who made the sale figured as respondent No. 1. THE manufacturer figured as respondent No. 4 and distributors have been arrayed as respondent Nos. 2 and 3 in this appeal.

2. THE appellant preferred a complaint before the State Consumer Commission. It was alleged that the cement which was supplied to her was of sub-standard. This was got tested from the Government Laboratory, Jammu. As a result of this sub-standard cement, the appellant is said to have suffered a loss. She is demanding compensation. THE loss assessed in the complaint is Rs. 82,051.80. THE damages to the extent of 10 times of the cost incurred by the appellant is said to be the proper compensation. It was the further case of the appellant that she had got this cement

tested from the Government Laboratory. THE report is said to be in favour of the appellant/ complainant. It was on the basis of the above report a complaint came to be lodged with the State Commission. THE respondents and more particularly respondent No. 4 have filed the objections. THE stand taken is that under Section 11 of the J&K Consumer Protection Act, if the complainant alleges that the goods are defective and with a view to find out the defect proper analysis or test of the goods is required then the "Forum" dealing with the complaint would obtain a sample of the goods from the complainant. This sample would be sealed and would be sent to the Appropriate Authority for testing. THE statute further confers right on the parties to object to the report so submitted. It is stated that in this case no sample was made available and there was no opportunity available to the respondents to challenge the result of the test, therefore, the complainant is not entitled to claim any compensation. It was this factor which prevailed with the Commission in rejecting the complaint, preferred by the appellant. Another reason which was also taken note of was the fact that the complainant/appellant on her own showing had purchased only 80 bags of cement. This quantity as per the respondents was not sufficient for raising the construction. It was accordingly suggested that some other material must have also been used. In these circumstances it was urged that no firm finding can be recorded that it was on account of defective material having been supplied by the respondents some loss has been caused to the complainant.

After having gone through the record we are of the opinion that the Commission rightly expressed its opinion that unless or until there is compliance of Section 11 of the Act, no findings can be recorded in favour of the appellant. The material has necessarily to be tested. The result of this test would be open to objections. As the cement in question was not available for the purposes of examination under Section 11 of the Act, therefore, it cannot be said that the opinion expressed by the Commission that on account of result of test being not available, no findings can be recorded in favour of the complainant, is a finding which requires to be reversed. Again there is nothing on the record to indicate that the entire construction which was done by the complainant, was done with the material which was supplied by the respondents to the complainant.

Further absence of sample analysis is significant. If the procedure with regard to testing the material is not followed then, the relief cannot be granted on the mere assertions made by the complainant. See *State of Madhya Pradesh v. Tribhovan Prashad Chaturvedi*, I (1991) CPJ 455=1991 (2) CPR 320. Similar opinion has been expressed in the case reported as *State of Madhya Pradesh v. Ramitra Pidika*, II (1991) CPJ 717=1991 (2) CPR 383. The necessity for a sample testing was again insisted upon by the Delhi State Commission in case *Dainik Rail Yatri v. General Manager, Northern Railways*, I (1992) CPJ 218 (NC)=1992 (1) CPR 270. In view of the above, we do not find any merit in this appeal. The same is dismissed with no order as to costs. Appeal dismissed.