excity Hybrid Seeds (P) Ltd. Vs Gati Cargo Management Services

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: July 7, 2011

Citation: 2011 0 NCDRC 369 : 2011 3 CPJ 356 : 2011 3 CPR 307

Hon'ble Judges: V.B.Gupta , Suresh Chandra J.

Final Decision: Petition allowed

Judgement

1. THIS revision petition has been filed by the complainant to challenge the order dated 09.05.2006 passed by the Tamil Nadu State Consumer

Disputes Redressal Commission, Chennai (State Commission for short). OPs 1 & 2 before the District Forum are respondents herein.

2. BRIEFLY stated, the complainant booked a consignment of 145.81 Kgs of cotton seeds on 29.05.99 with the OPs for being delivered to the

consignee at Nagpur on 2.6.99. The consignment, however, was received at Nagpur only after 16 days of the period fixed and as the season for

the sowing of cotton seeds was completed, the consignee did not take delivery of the consignment and due to non-delivery of the goods within

time, the complainant had lost their reputation with their customers. A consumer complaint, therefore, came to be filed with the District Forum

against the OPs. On being noticed, the OPs resisted the complaint and denied any deficiency in service. According to them, non-delivery of the

seeds within the time was not on account of any fault on their part but the fault was attributable to the complainant. It was submitted that when the

consignment was transported through different States, it was stopped at various check posts for want of necessary documents for transit.

According to the OPs even through this fact was informed to the complainant over telephone with a request to produce necessary documents and

bills immediately in order to avoid unnecessary delay, the complainant did not take any steps to release the goods from the check post. The OPs,

therefore, had to take steps to release the goods by convincing the check post authorities in order to avoid further delay in transporting the same

and also to save their reputation. It was alleged that the complainant had deliberately suppressed these facts while lodging the complaint and hence

there is no deficiency in service and the complaint was filed only for unlawful gain. On the basis of the submissions made and the documents filed,

the District Forum accepted the case of the complainant and by its order dated 13.7.2001 it directed the OPs to pay to the complainant a sum of

Rs.70,000/- being the cost of seeds consigned through the OPs with 12% p.a. interest from 29.05.95 till payment and a sum of Rs.10,000/- by

way of compensation for monetary loss and mental agony within two months from the date of the order. Aggrieved by this order, the OPs filed an

appeal before the State Commission against this order. The State Commission allowed the appeal of the OPs and set aside the order of the District

Forum by its impugned order. While setting aside the order of the Distrcit

Forum, the State Commission has made the following observations:- On a perusal of the order of the District Forum, it is found that the

complainant had not established that on account of the alleged delay on the part of the opposite parties the germination powers of the seeds were

lost. As rightly pointed out on behalf of the opposite parties, the complainant had not chosen to have the seeds tested in a scientific laboratory to

assess the potency. Further, the seeds had 9 months life, a mere 16 days delay which it had been established by the opposite parties was due to

want of transit documents relating to the seeds it could not be held that the carriers were at fault. The District Forum was in error in allowing the

complaint without finding that the complainant had established their case by having the virility of the seeds examined or tested in a scientific

laboratory. Decisions have held that a delay of a few days in delivery cannot be stated to be undue delay. In the above circumstances and in the

absence of any material supporting the case of the complainant, we are obliged to interfere. The order of the District Forum cannot be sustained.

We have heard counsel for the petitioner and the respondents. It is submitted by learned counsel for the petitioner that the consignment of seeds in

question was booked with the respondents on 29.5.99 declaring the value of the consignment as Rs.70,000/-. Keeping in view the fact that the

seeds in question were required by the consignee urgently for the sowing season, the petitioner wanted the consignment to be reached at the

earliest in a time-bound manner. For this purpose, the petitioner was assured that the consignment would be delivered by 2.6.1999 and

accordingly the freight charged by the respondents was also indicated to be 12 times of the normal freight. All these aspects are duly recorded on

the Docket receipt bearing no.BR 98815 issued by the respondents while accepting the consignment for its movement to Nagpur. A copy of this

Docket receipt is placed at Annex. P-2 (page-31) on the file. A letter was, however, received by the petitioner from the consignee on 21.6.99 in

which it was communicated that the information about the arrival of the consignment at Nagpur was received by the consignee from the

respondents on 18.6.99 and since the swing season for the cotton seeds in question in the area was already over, the consignee refused to accept

the delivery of the consignment since it was of no use to them after sowing season. It was further indicated in the letter of the consignee that their

business had been adversely affected and they have lost their goodwill with the farmers who were their regular customers. The consignee also

conveyed their intention to claim compensation in this regard from the petitioners. The petitioner accordingly sent a legal notice in July 1999 to the

respondents alleging deficiency of service on their part in the matter of delayed movement of seeds in question from Coimbatore to Nagpur and

calling upon them to pay a total compensation of Rs.7,02,400/- with interest for this act of deficiency. Learned counsel submitted that all these

facts are not under dispute and are supported by documents placed on the file. He contended that the plea regarding documents in respect of the

steps taken by the respondents was an after-thought and that too put fourth for the first time in the written statement filed by them in reply to the

consumer complaint of the petitioner. He submitted that the State Commission gravely erred in reversing the well-reasoned order of the District

Forum on the plea of the continuous germination power of the seeds and non-testing of the seeds in a scientific laboratory to assess their potency

by the complainant because no such plea had been taken by the respondents before the District Forum. Relying on the ratio laid down by the Apex

Court in the case of Patel Roadways Ltd. Vs. Birla Yamaha Ltd. [(2000) 4 SCC 91], learned counsel submitted that the liability of a common

carrier for loss or damage to the goods entrusted to it for transportation is absolute, like that of insurer and is subject to the only exception of the

loss or damage having been caused due to act of God and in view of section 9 of Carriers Act, negligence on the part of the carrier need not be

established by complainant/owner of the goods. He submitted that in the present case timely delivery of the consignment was extremely important

and undoubtedly it had been specifically assured by the respondents that the consignment in question would be delivered by 2.6.1999 and for this

purpose, substantially higher freight also had been charged and hence the delayed movement of the consignment clearly amounted to serious

deficiency of service on the part of the respondents for which they were squarely liable. Regarding the plea of the consignment being booked at

owners risk taken by the respondents, the counsel for the petitioner relied on the following observations of their Lordships of the Apex Court in the

case of Nath Brothers Exim International Ltd. Vs. Best Roadways Ltd. [(2000) 4 SCC 553] in support of his contentions:

27. From the above discussion, it would be seen that the liability of a carrier to whom the goods are entrusted for carriage is that of an insurer and

is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, indicated by the

consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own

goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent

and servants.

28. Learned counsel for the respondent contended that the goods were booked at OWNERS RISK and, therefore, if any loss was caused to the

goods, maybe on account of fire, which suddenly engulfed the neighbouring warehouse and spread to the godown where the goods in question

were stored, the carrier would not be liable.

29. OWNERS RISK in the realm of commerce has a positive meaning. It is understood in the sense that the carrier would not be liable for

damage or loss to the goods if it were not caused on account of the carriers own negligence or the negligence of its servants and agents. In Burton

v. English and again in Wade v. Cockerline it was held that in spite of the goods having been booked at OWNERS RISK, it would not absolve the

carrier of its liability and it would be liable for the loss or damage to the goods during trans-shipment or carriage. These decisions granted absolute

immunity to the carrier, but they have lost their efficacy on account of subsequent decisions in Svenssons v. Cliffe S.S.Co which was considered in

Exercise Shipping Co. Ltd. v. Bay Maritime Lines Ltd. (The Fantasy) in which it was observed as under: The question whether words such as at

charterers risk can operate as an exemption clause in favour of a party otherwise liable for negligence was decided by Mr Justice Wright (as he

then was) in Svenssons Travaruaktiebolag v. Cliffe Steamship Co. He considered the authorities in detail and concluded: It is quite clear, in my

judgment, on the authorities as they now stand, that the words at charterers risk, standing alone and apart from any other exception in the charter-

party, do not excuse the ship-owner in the case of a loss due to the breach of warranty of seaworthiness ... I think that the words standing by

themselves have also to be read as limited to losses and damages where there has been no negligence on the part of the shipowner or his servants.

He went on to consider the charter-party terms in that case which also included an exceptions clause, clause 11. He held that that clause should

have its full effect whereas if at charterers risk had included an exception of negligence, it might not have done so. That judgment has been followed

since 1932, for example in The Stranna and East & West Steamship Co. v. Hussain Bros., and it has not, so far as I am aware, been dissented

from.

30. In Mitchell v. Lancashire and Yorkshire Rly. Co. it was held that OWNERS RISK only exempts the carrier from the ordinary risks of the

transit and does not cover the carriers negligence or misconduct. So also, in Lewis v. Great Western Rly. Co. the words OWNERS RISK, were

held to mean, at the risk of the owner, minus the liability of the carrier for the misconduct of himself or servants. 31. Thus the expression at owners

risk does not exempt a carrier from his own negligence or the negligence of his servants or agents.

Winding up his arguments, counsel for the petitioner submitted that in view of the law laid down by the Apex Court in this regard and specific

assurances given by the respondents for which they were duly compensated by way of enhanced freight, the respondents cannot be allowed to

take the plea of ?owners risk to cover their own deficiency in reaching the consignment much later than the assured date of delivery and hence the

impugned order of the State Commission unsuiting the claim of the petitioner is liable to be set aside.

3. PER contra, counsel for the respondents submitted that even if the slight delay in reaching the consignment to Nagpur is treated as deficiency in

service, the liability in such a case of the respondents was limited to the terms and conditions specified in the Docket issued by the respondents

while accepting the consignment for delivery. He specifically drew our attention to condition no.12 where it is specifically provided that the liability

of the respondents as carriers of goods would be limited to refund of freight in all cases as per their advertisement. It is also provided that as

carriers, the respondents would not be liable for any act, default or omission on the part of the consignor or consignee or any other entrusted party

howsoever arising. While fairly admitting that time-bound movement of cotton seeds was specifically asked for by the respondents from the

petitioners while entrusting the consignment for transportation from Coimbatore to Nagpur, he contended that the petitioners were equally

responsible for the default/omission on their part for not taking care and handing over the documents in respect of the goods in question. In support

of his contentions, learned counsel for the respondents relied on the judgement of the Apex Court in the case of Bharthi Knitting Company Vs.

DHL Worldwide Express Courier Division of Airfreight Ltd. [(1996) 4 SCC 704] in which it has been held that in case of acute dispute of facts,

the State/National Commission should not go behind the terms of the contract and should instead refer the parties to the Civil Court. He submitted

that it was also held in that case when under specific terms of the contract, liability to damages was limited, the State Commission erred in ordering

damages beyond that limit. In view of these aspects, he pleaded that the State Commission rightly set aside the erroneous order of the District

Forum while accepting the appeal of the respondents and hence the same should be upheld and the revision petition dismissed.

Having heard submissions of learned counsels, we have also carefully perused the record. The basic contentions and the submissions made on

behalf of the petitioner are proved from the documents placed on file and the same are not under dispute. We are convinced that the plea of

germination power of the seeds and non-testing thereof from any scientific laboratory was neither taken by the respondents before the District

Forum nor the same is really relevant to the decision of the present case. Undoubtedly, timely delivery of the consignment was of paramount

importance in the present case and admittedly the same was delayed. The observations of the Apex Court in the two cases relied upon by the

counsel for the petitioners are very relevant and applicable to the present case. The ratio laid down in the case of Bharathi Knitting Co. (supra)

relied upon by the counsel for the respondents has been duly considered by the Apex Court in the case of Patel Roadways Ltd. (supra) and

distinguished and hence cannot provide any comfort to the respondents. In view of these aspects, we find that the State Commission made a

mistake in unsuiting the claim of the petitioners and setting aside the well-reasoned order of the District Forum accepting the complaint. We,

therefore, do not see any reason to interfere with the order of the District Forum and uphold the same while setting aside the impugned order of the

State Commission. The revision petition, therefore, stands allowed with the parties bearing their own costs.