

**(1998) 11 BOM CK 0139**

**Bombay High Court**

**Case No:** Appeal No. 1257, 1270, 1298 of 1995

National Forum for Consumer  
Education (Rashtriya Upbhokta  
Shikshan Sanstha), Akola

APPELLANT

Vs

M/s. Sanjay Krishi Seva Kendra  
and others

RESPONDENT

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**Date of Decision:** Nov. 7, 1998

**Acts Referred:**

- Consumer Protection Act, 1986 - Section 13, 2(1)
- Evidence Act, 1872 - Section 104
- Seeds Act, 1966 - Section 5

**Citation:** (1999) 2 ALLMR 28 : (1999) 4 BomCR 45

**Hon'ble Judges:** Smt. Rajyalakshmi Rao, Member; A.A. Halbe, President

**Bench:** Division Bench

**Advocate:** Gawande, for the Appellant; Kothari and Mantri, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

A.A. Halbe, President

1. All these appeals arise out of Complaint Nos. 55, 75, 76, 78 all of 1995 and Complaint Nos. 50 and 62 of 1995 and Complaint No. 23 of 1995. In all these complaints, the farmers who had sowed hybrid cotton seeds of AHH 468 variety in their respective fields had failed to get any cotton crop on account of adulterated seeds. The seed variety was produced and marketed by M/s. Parth Seeds, Dabhoi, District: Baroda (Gujarat). The District Forum in all these complaints did not accede to the request of the farmers for award of compensation and rejected all these complaints under the pretext that the report of the Grievance Committee, Akola District which is in charge of supervision of seeds was not acceptable, that the seeds were not forwarded to the Laboratory for test and that the entire procedure to

project the loss of crop was legally infirm on account of non-observance of procedure required for establishing the fact that the seeds were adulterated and therefore, the cotton plants could not bear the cotton bolls/ pods. The District Forum also blamed the Agricultural Officers in charge of cotton crops of Akola District.

2. The common facts in all these complaints were that during the year 1994-95, all the complainants had purchased hybrid cotton seeds of AHH variety produced and marketed by M/s. Parth Seeds through respective distributive agencies namely M/s. Sanjay Krishi Seva Kendra, M/s. Jholebaba Krishi Seva Kendra, M/s. Sachin Seva Kendra, M/s. Sanjay Seeds & Pesticides, M/s. Patil Krishi Seva Kendra and M/s. Kisan Agencies Krishi Seva Kendra all situated at respective Talukas and District places in Akola. The cotton crop is a Kharip season crop and that the above seeds had been sown in 9 lots in Akola District during the above season. The plant growth was quite normal giving rise to expectation that the cotton crop would be extremely well. The sowing was made somewhere in June 1994 and the crops were expected by the end of year 1994 or beginning of 1995. Surprisingly, when the cotton balls/pods were expected to fructify, it was noticed that the crop was less than 10% and in some cases there was no quantity worth the name of the cotton balls. The Grievance Committee established under the Rules on the basis of the report of the cotton breeder of Panjabrao Krishi Vidyapeeth, Akola surveyed the cotton crop and found that the seed was defective upto 60-70% and that plants were male sterile which were incapable of bearing any cotton balls. It was noticed that the cotton seed AHH 468 could not have more than 1% genetic impurity but the seeds that were supplied to the farmers were produced in defective manner. The reports of the experts were also obtained. Senior Research Scientist Dr. L.D. Meshram in charge of All India Co-ordination Cotton Improvement Project-Panjabrao Krishi Vidyapeeth (PKV) carried out the detailed examination of the seeds and found that AHH-468 seeds marketed by M/s. Parth Seeds were not actually AHH-468, because in AHH-468, the question of sterility did not arise as both the parents were fertile. It was reported that the true female of AHH-468 hybrid was not used while taking the seed production. Instead of AK-32, CAK-32-A, a female and other hybrid CAHH-468 (CMS based) appeared to have been used. The true male parent is DHY-286-I in AHH-468 hybrid seed.

3. The District Forum found that the Grievance Committee did not issue notice to the opposite parties, that the seeds were not forwarded for laboratory's examination, that the Agricultural Officer was negligent in performing his duties and this disabled the District Forum from awarding any relief.

4. We may incidentally refer to the stand taken by the Parth Seeds. According to Parth Seeds, the seeds were certified by the Government Agency in Gujarat. The necessary procedure of male DHY 286-I and female AK 2 was used in the manufacture of the seeds AHH-468. The said seeds were tested in the laboratory

and the field and after seeing the germination and its produce, the seeds were duly certified by the Government Agency. The Government Agency is constituted under the Seeds Act. Similarly, the Zilla Parishad in charge of agriculture did not follow the procedure of giving notice to the producer and the dealers of the seeds. The seeds were also not sent for laboratory test. It is possible that the land wherein the seeds were planted, may not be suitable, the farmers may have committed mistakes in providing proper manual, that the temperature may not be suitable for the crop and that the seed bags may have been negligently handled so as to bring in moisture and affecting the seed productivity. The seeds did not have any sterility and that the complainants reported about the defective seeds quite late. The report of the Grievance Committee and the Zilla Parishad is also not proper in absence of laboratory analysis and for these reasons, the claim did not sustain. It is further stated that except the complainants, nobody else complained about the quality of the seeds and in that light, claim for compensation is not maintainable.

5. The opposite parties have also produced the certificates issued by Gujarat Seed Certification Agency. It does not seem to be in dispute that M/s. Parth Seeds supplied the cotton seeds in about 9 lots. All the seeds were of AHH-468 and it can be presumed that the seeds sown by the farmers were of the same variety and that they were produced by Parth Seeds and distributed through various agencies referred in the complaint. The complainants when found that the cotton crop had failed on account of adulterated seeds, made grievance to the Seeds Grievance Committee constituted by the Agricultural Director, Maharashtra State, as per Circular No. 3083 dated 30-1-1984 to investigate into the complaint of the seeds. The Seeds Committee can be said to be legally constituted and it comprises of Agricultural Development Officer, Zilla Parishad, Akola, District Seed Certification Officer, District Seeds Officer, District Manager, Maharashtra State Seeds Corporation Ltd., Scientist of the Agricultural University and District Quality Control Inspector. The last being the Member/Secretary of the Committee. Now this Committee carried out the extensive inspection of the fields of the complainants as well as other fields and submitted the report that the yield in all the fields was negligible and that 60-80% of seeds were sterile male seeds. The said report is on record. The report dated 7-8-95 clearly indicates that the inspection made in the Kharip season of 1994-95 clearly disclosed that 9 lots of Parth Seeds were distributed and that the height of the plants was more than normal. There were no cotton balls/pods. The said Committee has also taken the video photography and has noticed the crop wherein the plants did not bear the fruits. We do not think that this report can be discarded so lightly, when the said Committee is manned by Agricultural experts. The Scientist of PKV University is one of the members and he has gone into the details of the seed analysis. Similarly, there is also a report of the laboratory at Nagpur in regard to one of the lots February 94-06-44-010, which is one of the lots despatched by Parth Seeds in the Akola District. As against 1200 seeds planted there were only 449 plants. It is also reported that the seed was not of

the standard and that the produce was hopelessly low. We are not ready to reject this certificate. It relates to one of the lots of the seeds sold by M/s. Parth Seeds. There is also the report of the Agricultural Development Officer, Zilla Parishad, Akola filed before the Commission, wherein he has referred that the genetic purity of cotton seed AHH-468 was tested and that the seeds were sterile because presence of pollens in flowers were not recorded, because the sample was of variety AHH-468 in which male sterility was not observed/tested. Even in the report of the Committee and the cotton breeder, it was stated that the crop variety is not of AHH-468 and that there is no ball formation because the plants were sterile. This caused heavy loss to the farmers. The hybrid cotton AHH-468 is produced by emasculation method and there is no chance of sterile plants in AHH-468 with the failure of cotton balls/pods on the cotton plants. It could be easily concluded that the seed lots from Parth Seeds were defective. Similarly, the Zilla Parishad also vide their report No. 4135 dated 7-6-95 stated that the report of the seed testing laboratory, Nagpur pertaining to AHH-468 lot No. 90-46-44-10 produced by M/s. Parth Seeds clearly indicated that seeds were not of required standard. Even the Agricultural Officer Shri Parate has testified to the above. It is rightly argued on behalf of the respondents/complainants that the test report of the said laboratory in respect of Zilla Parishad, Jalna was not relevant. Because that was the different District where different lots may have been supplied and it might be possible that those seeds may be genuine, but that cannot weaken the case of the complainants.

6. The learned Advocates for M/s. Parth Seeds and the Distributors have taken shelter u/s 13 of the Consumer Protection Act. According to them, if the seeds were said to be defective, the samples should have been forwarded for laboratory examination by the complainants. The same has not been done. We are afraid as to whether such stands should be permitted to be taken by the opposite parties. Here the provision shows that if the goods which cannot be determined with proper analysis or tests, the District Forum may obtain samples from the complainants for being forwarded to the laboratory. The complainants in this case are fortified by the report of the Scientist, the report of the Grievance Committee and the report of Agricultural Development Officer. We cannot lay down that the complainant is under legal obligation of proving that seeds are adulterated beyond any pale of doubt. We cannot lose sight of the fact that Consumer Protection Act is for the benefit of the consumers and it has been laid down by the courts that the said Act shall be read down in order to serve the main purpose of the welfare of the consumers. If we adopt the lines suggested by the opposite parties, possibly we shall be doing injustice to the intimate objective of the Act. It has been rightly urged on behalf of the complainants that in this case when everything was in favour of the complainants, the manufacturer or the producer or the dealers should have forwarded the seeds for laboratory analysis through the Redressal Forum. The approach of the Redressal Forum in this regard is not sustainable in view of the fact that normal presumption of onus on the complainant cannot be invoked in this

case. u/s 104 of the Evidence Act, when the fact is within the special knowledge of the party, which in this case is the producer, that party itself should discharge the onus and that can be done only by opposite party sending the seeds for analysis. In this case the same has not been done.

7. It is also stated on behalf of the complainants that the complainants did not retain the seed sample because they never anticipated that there will be a total failure of crop and that they would suffer serious loss in this bargain. We cannot be oblivious of the fact that farmers are a poor lot, that they are illiterate, that they are unaware of the rigid provisions of the law and that they may not preserve or take precaution to meet such an eventuality of the seeds being found adulterated and yielding no cotton crop in the end. We do not wish to propagate that the farmers enjoyed the immunity, but all the same there is some responsibility caste on the producer to deliver the genuine cotton seeds. This could have been proved by sending the seeds to the proper laboratory. We, therefore, do not wish to read any non-compliance of provisions of section 13 of Consumer Protection Act, when there is massive failure of crop, it pinpoints the defective seed and not improper cultivation.

8. It is not in dispute that the complainants have purchased the above variety of cotton seeds from the dealers of M/s. Parth Seeds. The insinuation in the submission of opposite parties is that some other seeds might have been used but that cannot be upheld. It was not in the interest of the farmers to sow the adulterated seeds and suffer the loss in the cotton crop. By no stretch of imagination, we are prepared to assume that in order to placate the producers, the farmers conspired and dragged the producers to the Redressal Forum. The grievance on the part of the farmers is genuine. The farmer is totally left high and dry in the matter of cotton yield to the details of which we may come later. The fact remains that the farmers did suffer immensely in the matter of cotton crop that affected adversely their living. They were left with no income as against the expenditure on seeds, fertilizers, transport, labour and if that be so, the plight of the farmers has been very serious.

9. It is unfortunate that the District Forum was guided by the technicalities and niceties in holding that no notice was issued by the opposite party. The Grievance Committee comprising of Agricultural Experts have no reason to tender the false report which may be detrimental to the interest of the producers. We cannot fathom or that the members of the Agricultural Committee in collusion with the farmers would concoct such a false report. On the other hand the details to which we shall come later enunciated in the respective reports after certifying the amount would go a long way to establish that the reports are truthful. When the damage is widespread and when number of farmers suffered, mere absence of notice to the producers cannot turn table against the farmers. The producers had the remedy to retrieve the situation arising out of massive agitation by the farmers, by fairly forwarding the seed samples to the laboratory. The same has not been done and

the producer therefore must take the consequences. The Andhra Pradesh State Commission in the case of Maharashtra Hybrid Seeds Co. Ltd. v. Prasad and another, reported in 1998(II) C.P.J. 320 has observed as follows :--

"It is the contention of the appellant that the complainant has not sent the seeds purchased by him for testing to any laboratory and that therefore the complaint is liable to be dismissed. We are not inclined to agree with the said contention, since the seeds were purchased by a small farmer for the purpose of raising sunflower crop normally after sowing the land with the seed, he won't keep any seeds in anticipation of any defect in the seeds. The seeds purchased by him will be utilised for raising the crop. It was only after a period of three months or so, when he found that the yield is far lower than the normal yield expected, he filed the complaint. It therefore cannot be said that he retained some seed with him for the purpose of sending the same to a laboratory. On the other hand the first opposite party being the manufacturer and depending on the date of purchase by the dealer, should have traced the batch number, date of production and sent that batch of seeds to the laboratory for testing. Hence we are not inclined to accept the contention that the complaint is liable to be dismissed for the failure of the complainant to get the seeds tested in the laboratory."

10. The same view is reiterated by the same Commission in the case of Managing Director, A.P. Seeds Development Corporation Ltd. v. Seelam Rama Mohan & another, reported in 1996(III) C.P.J. 435 :--

"It is contended by the learned Counsel for the appellants that since the complainant has not taken any steps to send the seeds for analysis, the complaint is not maintainable. But the District Forum rightly held that the seeds may not have been left with seeds after transplantation and according to the provisions of section 13(1)(c) of C.P. Act, it is open to the opposite parties also to request the District Forum to send the seeds for analysis and being the manufacturer as the Opposite Party No. 2 will be in possession of seeds, and therefore the complaints are maintainable. We agree with the conclusion of the District Forum."

11. The National Commission in the case of Malaprabha Neerwari Balakedarara (Irrigation Consumer) Co-op. Sangh Ltd. v. The State of Karnataka, Department of Agriculture & others, upheld the report of the Committee about the defective cotton seeds. In that case the two member Committee has filed the report. Here we find that the Grievance Committee is constituted under the Rules and Act and we believe that the report of that Committee is on a higher evidentiary pedestal.

12. The investigation report is filed by the Senior Research Scientist Dr. L.D. Meshram, who is the member of the Grievance Committee. There is a report about AHH-468 Hybrid Cotton Seeds. He has observed that the Grievance Committee found that the percentage of sterility in the fields ranged 65-70% and that the true types of plants were only 10%. We further find that the true female of AHH-468 was

not used while taking the seed production. We may incidentally observe that the certificate issued by the Gujarat State Seed Certification Agency in regard to various lots has been challenged by Dr. Meshram. According to him the said agency did observe only hairiness on leaves and petal spot in flower. On the basis of these, they tagged the seed produced by Parth Seeds Co., Dabhoi as genuine. The said agency did not take much care about the presence or absence of pollen grains during field test and General Out Test (F.T. & G.O. Test) since the hybrid was AHH-468 (Conventional). The said Scientist has concluded that the seeds marketed by M/s. Parth Seeds Co. in the name of AHH-468 was not actually AHH-468, because in AHH-468, the question of sterility did not arise as both the parents are fertile. The seeds produced by M/s. Parth Seeds Co. was not AHH-468 Hybrid. The said Committee took into consideration various aspects of the seeds. It found that instead of AK-32, CAK-32-A, a female of other hybrid, CAHH-468 (CMS based) must have been used and therefore the hybrid plants have shown sterility.

13. I was also observed that the DHY-286-1 is the true male parent of AHH-468 Hybrid (conventional bybrid), but not the parent of CAHH-468 (CMS Based Hybrid). It was also noticed that some plants were found to be fertile, which may be on account of crossing of the fertile AK-32-B plants present in the CAK 32-A female with the male parent, as the fertile plants resembled true plants of AHH-468 and not the plants of CAHH-468. The genuine seed AHH-468 should have been the female and male AK-32 and DHY-286-1 respectively produced by emasculation method and pollination method. In this case, the combination of CAK-32 A female was used for crossing with DHY-286-1 and therefore, the resultant progeny of the hybrid was sterile.

14. With such copious evidence on record, we are unable to upheld the contention of the producer that no proper procedure was followed or that no notice was issued to the producer.

15. We, therefore, turn to the facts relating to each complainant.

Tejrao Wamanrao Paraskar of village Manjari in Complaint No. 50/95 had sown the AHH-468 hybrid seed in 6 Hectors. The seed was February 94-06-44-010 dated 15-6-94. The report by the Committee shows that there were 90% sterile plants. He had spent around Rs. 5,600/- for the seeds.

Similarly, W.M. Patne of village Manjari in Complaint No. 62 of 1995 had sown the above variety in 80-R. and 70% of his plants were found to be sterile.

Similarly, Krishna V. Barkade of village Chikhalgaon in Complaint No. 55 of 1995 had sown the seed from the above lots in 80-R. and 70% of his plants were found to be sterile.

Similarly, Bhaurao Devrao Mhaisane of village Mahan in Complaint No. 55 of 1995 had sown the same seed in 3 acres and 65% of the plants were found to be sterile.

Himmatrao W. Dophekar of village Shelu Bazar in Complaint No. 75 of 1995 had sown in 80-R. and 65% of his plants were found to be sterile.

Pralhad S. Bhoyar of village Sarsi in Complaint No. 75 of 1995 had sown the above seed in 80-R. and 65% of his plants were found to be sterile.

Bhimrao Bapurao Bhoyar of village Sarsi in Complaint No. 76 of 1995 had sown the above seed in 1.20 Hectors and 90% of his plants were found to be sterile.

Sakharam Jayaji Jadhav of village Hissai in Complaint No. 76 of 1995 had sown the same seed in 40-R and 65% of his plants were found to be sterile.

Omkar Tukaram Pandit of village Jalalabad in Complaint No. 78 of 1995 had sown the above seed in 1.60 Hectors and the sterile plants were 70%.

Madhavprasad R. Tiwari of village Sarsi in Complaint No. 23 of 1995 had sown the same seeds in 40-R and his 60% plants were found to be sterile.

16. From the report, we also find that seven other farmers had sown the same seeds out of 9 lots and had suffered immensely on the question of sterility. The lot numbers are given in the report of the Grievance Committee. We may briefly recapitulate that the farmers have planted and sown the Parth seeds obtained by them through their dealers. They found that the majority were sterile plants on account of defective seeds, that the evidence of the defective seeds is supported by the Grievance Committee constituted under the Rules. The Committee members have carried out extensive inspection of various fields including the fields of the complainants and recorded the sterility percentage in the Survey report. The Senior Research Scientist Dr. Meshram has analysed the seeds under reference and has found that the Parth Seeds did not sell the genuine AHH-468 Hybrid cotton seeds. We also did not come across the notification about AHH-468 seed u/s 5 of the Seeds Act and in that event the seed could not be marketed or sold at the relevant time.

17. We are not impressed by the submission on behalf of the producers that they were not noticed. We believe that when there is a widespread cry, the responsibility lay on the producer to dispel the suspension by sending the seed to the laboratory. The same has not been done. The report of the certifying agency has not been proper as the said agency did not take care in ascertaining the pollination and growth of cotton bolls/pods. The Senior Research Scientist Dr. Meshram has indicated to this effect. It is also to be noticed that the Parth Seeds did not sell the genuine AHH-468 seeds and hence, the farmers suffered. We are, therefore, unable to dismiss the claim of the complainants as recorded by the District Forum. Now, so far as the dealers are concerned, they cannot escape the liability because they have sold the defective seeds, without legal warranty. They are as much liable as the Producer and they are therefore liable to pay compensation. We are of the view that the complainants are entitled to compensation. In our discussion with the representative for the complainants and also generally gathered from the reports,



we find that the one acre of land can yield 6 quintals of cotton. We do not see any separate evidence regarding expenses incurred by the complainants in obtaining the seeds, in sowing the seeds, transport and other field operations. We, therefore, quantify the damage at Rs. 1,000/- per quintal. We, therefore, quantify the damage in our following order :-

#### ORDER

All the appeals by the complainants are allowed.

a. Tejrao Wamanrao Paraskar in Complaint No. 50 of 1995 is entitled to compensation of Rs. 90,000/- plus cost of Rs. 5,000/- jointly from Patil Krishi Seva Kendra and Parth Seeds. The above amount shall carry interest @ 12% from the date of complaint till actual payment.

b. W.M. Patne in Complaint No. 62 of 1995 is entitled to compensation of Rs. 12,000/- plus cost of Rs. 2,000/- from Patil Krishi Seva Kendra and Parth Seeds and their liability shall be joint and several. The said amount shall carry interest @ 12% from the date of the complaint till actual payment.

c. M.R. Tiwari in Complaint No. 23 of 1995 is entitled to compensation of Rs. 6,000/- plus cost of Rs. 1,000/- with 12% interest thereon from the date of complaint till actual payment from Parth Seeds and Kisan Agencies Krishi Seva Kendra, Murtizapur. Their liability shall be joint and several.

d. Krishna V. Barkade in Complaint No. 55 of 1995 is entitled to compensation of Rs. 12,000/- plus cost of Rs. 2,000/- with 12% interest thereon from the date of the complaint till actual payment from Sanjay Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

e. Bhaurao Devrao Mhaisane in Complaint No. 55 of 1995 is entitled to compensation of Rs. 18,000/- plus cost of Rs. 3,000/- with 12% interest thereon from the date of the complaint till actual payment from Jholebaba Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

f. Himmatrao W. Dophekar in Complaint No. 75 of 1995 is entitled to compensation of Rs. 12,000/- plus cost of Rs. 2,000/- with 12% interest thereon from Jholebaba Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

g. Pralhad S. Bhoyar in Complaint No. 75 of 1995 is entitled to compensation of Rs. 12,000/- plus cost of Rs. 2,000/- with 12% interest thereon from the date of the complaint till actual payment from Sachin Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

h. Bhimrao Bapurao Bhoyar in Complaint No. 76 of 1995 is entitled to compensation of Rs. 18,000/- plus cost of Rs. 3,000/- with 12% interest thereon from the date of the complaint till actual payment from Sachin Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

i. Sakharam Jayaji Jadhav in Complaint No. 76 of 1995 is entitled to compensation of Rs. 6,000/- plus cost of Rs. 1,000/- with 12% interest thereon from the date of the complaint till actual payment from Sachin Krishi Seva Kendra and Parth Seeds. Their liability shall be joint and several.

j. Omkar Tukaram Pandit in Complaint No. 78 of 1995 is entitled to compensation of Rs. 22,000/- plus cost of Rs. 3,000/- with 12% interest thereon from the date of the complaint till actual payment from Sanjay Seeds and Pesticides and Parth Seeds. Their liability shall be joint and several.

18. Appeals allowed.