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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

112

CWP-17573-2024 (O&M).
Date of Decision: 04.12.2024.

KEHAR SINGH KANG

... Petitioner(s)

Versus

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Gaurav Datta, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

CM-19499-CWP-2024

Application is allowed as prayed for subject to all just
exceptions.

Annexures P-10 to P-19 are taken on record.

The Registry is directed to tag the same at an appropriate place
in the paper book.

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**MAIN CASE**

Challenge in the present petition is to the order dated 01.04.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC') vide which the order dated 13.09.2013 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as 'PSCDRC') has been modified to the extent that compensation of Rs.30,000/- on account of loss of vegetables has been awarded along with interest @ 9% per annum from the date of filing of the complaint i.e. 14.07.2011 till its realization along with Rs.5,000/- towards litigation expenses.

2 Briefly summarized, the facts of the present case are that the petitioner, who is a farmer by profession, had applied for a Poly House (Floricultural Unit), (a structure made of translucent material like glass or polyethylene where the plants grow and develop), to be constructed on his agricultural land under the National Horticulture Scheme. The Poly House was to be constructed at a cost of Rs.10,65,000/- and a subsidy of Rs.3,25,000/- was to be given as per the terms and conditions of the Scheme. The Assistant Director, Horticulture, Fatehgarh Sahib approved/sanctioned the project and sent the case file relating to loan to the Manager PAD, Bank, Branch Bassi Pathana vide sanction letter dated 25.03.2008. The loan of Rs.5,25,000/- was sanctioned on 25.03.2008 and the first installment was released on 31.03.2008. Thereafter, the petitioner approached the Director of Blue Stallion Equipments (P) Ltd. who agreed to construct the Poly House for Rs.7,00,000/- by 31.01.2009. He

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claimed that the installments were being paid by the petitioner regularly. It was averred that even though the entire amount, as per the agreement, was paid to the respondent-Company, however, construction of the Poly House was not completed within the stipulated time on account whereof, the petitioner suffered loss by not getting two crops in the year 2009. It is further averred that on account of non-installation of drip irrigation, fountain irrigation and shed-net system and resultant non-completion of the project in time, the petitioner also received the subsidy late. It was alleged that on account of rain in June 2010 and a minor storm, the said poly house was destroyed, its sheets were torn and the whole structure loosened and therefore, the crop of Capsicum was also destroyed.

3 Notice was accordingly sent by the petitioner on 01.07.2010, whereupon, the respondent-Company started repairing work but took too long to complete the same and divided the structure in two parts on the pretext that the same would be safer and stronger. However, the sheets were torn again and the structure became loose. Another legal notice was sent by the petitioner demanding sum of Rs.7,00,000/- which was replied to by the respondent Company refusing to repay the said amount.

4 The Assistant Director, Horticulture, Fatehgarh Sahib, sent a letter to the Deputy Commissioner, Fatehgarh Sahib, in respect of the loss to the petitioner due to rain and hailstorm. At the same time, being aggrieved of the deficiency in services provided by respondent Company, the petitioner approached the District Consumer Disputes Redressal Forum,

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Fatehgarh (hereinafter referred to as 'DCDRF') by way of filing Complaint No.168 dated 14.07.2011 with the following prayer:-

"It is therefore, prayed that the complaint of the complainant may kindly be accepted and opposite parties be directed to pay back the whole amount, received by opposite party from complainant ie. Rs.7,00,000/- as principal amount plus interest amount, and also be directed to pay the damages, compensation amounting to Rs.1,00,000/- and any other relief which this Hon'ble Forum may deem fit and proper, may also be granted in favour of the complainant in the interests of justice."

5 A reply was filed by the contesting respondent No.3 to the aforesaid complaint wherein the allegations levelled were denied.

6 It was observed that the Poly House had to be installed at a deal of Rs.7 lakhs for which quotation along with the terms and conditions of the contract and warranty were provided to the complainant. The work was completed as per the agreed terms and conditions and the quality that was admitted by the respondent-company to be supplied. It was stated that even though a bill/invoice for a sum of Rs.7 lakhs was issued to the petitioner, however, the entire amount had not been paid and there was an outstanding amount of Rs.1,75,000/- against the petitioner which was not paid and a suit for recovery thereafter has also been filed against him before the Civil Courts at Ludhiana. A further objection was taken that the construction of

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poly house was for a commercial purpose and the Consumer Forum shall not have jurisdiction in the matter. The respondent further submitted that the poly house was constructed as per the specifications of the Horticulture Department and as contracted and an inspection thereof had been conducted and a report was furnished on 03.08.2009 where-after the subsidy was obtained by the petitioner-complainant and that no deficiency in the material supplied or its quality was pointed out by the ExpertTeam constituted by the Horticulture Department. It was averred that in June 2010 a thunderstorm occurred on account of which damage was caused to the sheets of poly house and the loss was caused to the other poly houses as well. The petitioner himself sought compensation from the Deputy Commissioner as a result of the aforesaid act of God and natural calamity. It was thus not a case of any deficiency in the quality of the product being substandard or in violation of the agreed terms and conditions and therefore, liability cannot be fastened on the respondent Company.

7 On considering the rival submissions, the DCDRF, Fatehgarh Sahib, passed the award dated 27.01.2012 accepting the complaint of the petitioner and directed respondent-company to pay a sum of Rs.7 lakhs with 9% interest from the date of filing of the complaint i.e. 14.07.2011 till its realization along with litigation charges of Rs.5,000/-.

8 Aggrieved thereof, an appeal was preferred before the PSCDRC bearing No.355 of 2012. The State Commission considered the submissions advanced by the respective parties and the appeal filed by respondent No.2 was partly allowed modifying the award passed by the

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DCCDRF directing the respondent-Company to pay a sum of Rs.30,000/- on account of loss of vegetables and Rs.5,000/- as litigation expenses after the expiry of the period of one month. The operative part of the judgment dated 13.09.2013 passed by the PSCDRC is extracted as under:-

“10. As per the complaint, the appellant/opposite party had agreed to prepare the Poly House under National Horticulture Mission (in short 'NHM') costing Rs. 10,65,000/- out of Rs. 3,25,000/- was subsidy and Rs. 5,25,000/- was a loan taken from P.A.D. Bank, Bassi Pathana; directly paid to the opposite party whereas the complainant has failed to pay the balance of Rs. 1,75,000/- for which the appellant filed a Civil Suit No. 250 dated 25.8.2011 decided by the Court of Ms. Navdeep Kaur Gill, Civil Judge (Jr. Div.). Ludhiana on 29.7.2013 vide which the suit was dismissed. It has been stated by the counsel for the appellant that the matter is sub- Judice. However, in the present case, we mainly concerned with the preparation of the Poly House, therefore, document Ex. R-11 given by Assistant Director, Horticulture, Fatehgarh Sahib, in which it has been stated that size of the Poly House is 1000 square meter; its design is according to sub tropical condition; it has movable shading arrangement and it has been prepared according to the specifications, therefore, according to expert report the Poly House was prepared properly. Then there is a document Ex. R-12, which was written by the complainant to the Assistant Horticulture Department, Sirhind (Fatehgarh Sahib) that the Poly House has been damaged in the Thunder Storm and that the Company is repairing it at their cost and it will be completed shortly. There is no report produced on the record and the Assistant Director Fatehgarh Sahib had accordingly, given a report to the Deputy Commissioner Fatehgarh Sahib

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Ex. R-14 and it has been further stated that there was loss to the vegetables to the tune of Rs. 25,000/- to Rs. 30,000/-. No documentary evidence has been produced on the record by the complainant that repair of the Poly House has not been done by the appellant/opposite party according to his satisfaction. Therefore, firstly in case there was any damage to the Poly House that was due to Thunder Storm for which the appellant/opposite party is not responsible but even then they had got repaired it and there is no report produced on the record by the complainant that repair has not been made upto his satisfaction. Just there is loss of Rs. 30,000/- to the vegetables, accordingly, the observation made by the learned District Forum that the opposite party is liable to pay Rs. 7,00,000/- alongwith interest to the complainant is not sustainable.

11. In view of the above discussion, we partly accept the appeal. The order of the learned District Forum that the opposite party/appellant will pay Rs. 7,00,000/- to the respondent/complainant is modified and that the opposite party/appellant will be liable to pay Rs. 30,000/- on account of loss of vegetables and Rs. 5,000/- as litigation expenses after the expiry of the period of one month.

12. The arguments in this appeal were heard on 5.9.2013 and the order was reserved. Now the order be communicated to the parties.

13. The appeal could not be decided within the stipulated timeframe due to heavy pendency of court cases.

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14. Amount of was deposited by the appellant/OP Rs.26,000 with this Commission at the time of filing the appeal and Rs. 75,000/- in compliance with the order dated 30.3.2012. Out of this amount, Rs. 30,000/- be remitted to the respondent and the remaining amount with interest accrued thereon, if any, be remitted by the registry to the appellant by way of a crossed cheque/demand draft after the expiry of 45 days.”

9 Aggrieved of the aforesaid judgment passed by the PSCDRC, the petitioner preferred a revision before the NCDRC, New Delhi, bearing No.686 of 2014. Vide judgment dated 01.04.2022, the revision petition preferred by the petitioner was partly accepted and the award passed by the PSCDRC was partly modified to the extent that the petitioner was held entitled to interest @ 9% from the date of filing of the petition on the compensation of Rs.30,000/- towards loss of vegetables and the litigation expenses were increased from Rs.5,000/- to Rs.15,000/-. The operative part of the judgment dated 01.04.2022, passed by the NCDRC, New Delhi, is extracted as under:-

“10. In support of his submission that poor quality material was used by the Opposite Party/Respondent in the construction of the Poly House and, therefore, the structure was loosened, neither any evidence document was produced by the Complainant/Petitioner nor any Report to this effect was submitted by the Horticulture Department. Rather, the Horticulture Department had submitted Inspection Report dated 03.08.2009, which had been prepared by the Committee

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Members after duly inspecting the Poly House, in the effect that the Poly House had been prepared as per the specifications of the Horticulture Department. The District Commission was, therefore, not justified in returning a finding that poor quality material was used in the construction and the structure was loosened.

11. It is true that the Poly House was damaged due to Thunder storm/hailstorm in June 2010 and repaired by the Opposite party-respondent. The Complaint and the reply filed thereto are silent with respect to the date, when the repairs in the Poly House were completed and how the complainant/petitioner was satisfied with the repairs carried out. The Letter dated 27.09.2010 which had been written by the Complainant/petitioner to the Assistant Director of Horticulture, stating that the Poly House was damaged due to rain storm and the repair of it was going on by the Company at its own cost, which would be completed within some days, and he had full faith in the Company cannot be taken as his satisfaction of the repairs carried by the company out because by that time, the repairs were not complete. In that case too, in the absence of document/evidence to that effect that the repairs were not carried out properly, the Opposite Party/Respondent cannot be held liable for the damage caused to the Poly House.

12 It seems that the Poly House was constructed as per the specifications of the Horticulture Department and there was no complaint about the material used when it was completed. However, in June 2010, certain damage was caused to it and the structure was loosened, possibly because of high velocity of the Thunderstorm/Hailstorms, as opined by the Assistant

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Director of Horticulture Department in the Letter dated No. 413 dated 06.09.2010, for which the Opposite Party/Respondent was not liable, as per the terms and conditions of the Warranty (Ex R17). It is not the case of the Complainant/Petitioner that he was not aware of the terms and conditions of the Warranty

13. Further, The District Commission in its Order had observed that as per Ex R18 both the Patties had agreed that the Poly House would be completed within 30-35 days from the date of receipt of confirmed Order and the Order was received as Ex. R18 on 10.01.2009 and it was completed in February, 2010, with a delay of one year. The fact relating to said delay has not been denied by the Opposite Party/Respondent but both the District Commission and the State Commission have not considered this aspect of the matter, perhaps because the Complainant/Petitioner had not requested for any relief on account of delay.

14. In this view of the matter, while the Complainant/Petitioner was not entitled to the reliefs claimed in the Complaint, the State Commission was not justified in limiting the award to the tune of Rs.30,000/- towards loss of vegetables, as opined by the Assistant Director, Horticulture in its letter dated 06.09.2010, addressed to the Deputy Commissioner, Fatehgarh Sahib. Bearing in mind the fact the Complaint was filed on 14.07.2011, the State Commission ought to have awarded a reasonable interest on the amount of loss suffered in the year 2009. In our considered view, interest @ 9% per annum from the date of filing of the Complaint till realization would meet the ends of justice.

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15. In view of the aforesaid discussion, the Order passed by the State Commission is modified to the extent that the Opposite Party/Respondent shall pay to the Complainant Petitioner Rs. 30,000/- account of loss of vegetables and Rs. 15,000/- as litigation expenses. On the amount directed to be paid as loss of vegetables, interest 9% per annum shall also be paid from the date of filing of the Complaint, ie. 14.07.2011, till realization.

16. The Revision Petition stands partly allowed in the aforesaid terms.”

10 Aggrieved thereof, the instant writ petition has been filed.

11 Learned counsel for the petitioner has vehemently argued that the poly house was destroyed and the sheets were torn during the rain and storm which establishes that they were of substandard quality and when the same is considered in the light of the conduct of the respondent-company, which had undertaken the repair work amounts to acquiescence of the material being substandard. He further contends that the petitioner has not been sufficiently compensated for the loss suffered on account of loss of crop and that reasonable compensation has not been awarded to the petitioner. He thus prays that the award passed by the PSCDRC as affirmed by the NCDRC be set aside and the award passed by the DCDRC, Fatehgarh Sahib be restored.

12 When the matter was being heard, learned counsel for the petitioner was posed a question that for a product to be substandard, there

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has to be some standard quality terms and conditions agreed between the parties and it has to be established that the product supplied was not in consonance with the quality terms and conditions, as had been agreed to be supplied. Counsel for the petitioner sought adjournment on as many as three occasions to assist this Court on the said query but has made a submission that there is no evidence other than an affidavit filed by the petitioner in support of his claim. I am afraid that such an affidavit cannot ipso facto be sufficient to assume as to whether the product supplied was substandard or not. In order to draw any such inference, the petitioner was required to lead evidence about the agreed quality of material to be used and establish from the record that the material as supplied or installed was not as per the specifications. In the absence of leading the best evidence, self-serving affidavit cannot be relied upon as evidence to establish the product being substandard. Merely because the respondent-company had undertaken the repair work cannot be an acquiescence of the product being substandard. Such an act/initiative taken by a company may be for variety of reasons including as a part of marketing strategy and to increase the reach in the farmer community as well.

13 It is also considered by this Court that the initial project cost for installation of the poly house was Rs.10,65,000/- and against the said proposed cost, the petitioner had allotted the contract for a sum of Rs.7 lakhs. It appears that the petitioner himself agreed to the product of separate specification. Be that as it may, there is no further reason by this Court to delve further into the matter as there is no primary evidence to reflect any

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deficiency of service or deficient standard of product on the part of the respondent company, for supply of material. Hence, I do not find that there is any error in the finding recorded by the PSCDRC and as affirmed by the NCDRC about their being nothing on record to establish that the product supplied was of a substandard quality.

14 Now adverting to the issue as regards loss to the crop i.e. the vegetables. It has been noticed by the PSCDRC as well as by the NCDRC that the Assistant Director, Horticulture had submitted a report and had opined that the loss suffered by the petitioner to the tune of Rs.30,000/- and it was on the basis of such report that the Assistant Director, Horticulture, sent a report to the Deputy Commissioner, Fatehgarh Sahib about the loss being between Rs.25,000/- to Rs.30,000/-,that the compensation of Rs.30,000/- had been awarded.

15 There is no challenge to the aforesaid report of the Assistant Director, Horticulture. The person is a subject expert and the loss assessed on the higher side by the Assistant Director, Horticulture, has already been awarded. The petitioner cannot seek capitalization, in the garb of indemnification for a loss, and that compensation for loss has to be assessed on the basis of the undisputed assessment done. In so far as the aspect of delay and disbursal of compensation is concerned, the said aspect already stands suitably redressed by awarding interest @ 9% per annum from the date of filing of the complaint.

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16 I find that there is no illegality, perversity or impropriety in the orders passed by the PSCDRC as well as the NCDRC. The present petition is accordingly dismissed.

17 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

December 04, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No