

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

COMPLAINT CASE NO.31 OF 1996

Khursheed Husain and another
Versus
WIMCO Limited and others

Complainants
Opposite parties

COMPLAINT CASE NO.36 OF 1996

Khursheed Husain and another
Versus
WIMCO Limited and others

Complainants
Opposite parties

COMPLAINT CASE NO.122 OF 1996

Ved Pal Singh and others
Versus
WIMCO Limited and another

Complainants
Opposite parties

COMPLAINT CASE NO.22 OF 1998

Ashfaq Khan
Versus
WIMCO Limited and another

Complainant
Opposite parties

COMPLAINT CASE NO.23 OF 1998

Shakeela Begum
Versus
WIMCO Limited and another

Complainant
Opposite parties

COMPLAINT CASE NO.24 OF 1998

Vishnu Singh
Versus
WIMCO Limited and others

Complainant
Opposite parties

COMPLAINT CASE NO.127 OF 1999

Nathoo Singh
Versus
WIMCO Limited and others

Complainant
Opposite parties

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BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

HON'BLE MR. RAM PAL SINGH, MEMBER

For the Complainants : Sri M.H.Khan, Advocate

For the Opposite parties : Sri Rajesh Chadha, Advocate

DATED:26.03.2010.

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

All these complaints having common issues of facts and law are taken up together for hearing.

All the complainants are farmers in the district Bijnore, Bareilly, Shajehanpur and Hardoi. They have entered into an agreement with M/s WIMCO Limited whereby with the aid and help of M/s WIMCO Limited, the facility of loan through NABARD had been extended to the farmers for plantation of poplar trees in their agricultural lands. The company had to provide technical assistance also if required but the farmers were primarily responsible to grow the plants, nurse and harvest them for sale to the company. A bracket period of eight years was agreed between the parties. Towards the end of the said period as alleged by the complainants the farmers realized that the quality of the plants was not hybrid clonal plants and it was on account of the quality being defective that the trees could not fetch higher value. As a matter of fact all the complainants suffered losses as they could not fetch the sale proceeds of the trees upto their expectation. The complainants filed the complaints for recovery of various amounts of compensation.

The preliminary objection raised on behalf of M/s WIMCO Limited goes at the root of these complaints as it is pleaded that these complaints are not maintainable before this Commission as the farmers had engaged the services of M/s WIMCO Limited for commercial purpose.

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In support of this contention the company had mainly relied upon a decision of the Hon'ble NCDRC in "WIMCO Limited versus Ashok Sekhon and others", 11(2008) CPJ 210(NC)". It is significant to note that a similar dispute was determined by the NCDRC in the aforesaid case. Having scrutinized all the relevant aspects of the matter including the definition of a consumer the National Commission held that the goods i.e. Saplings purchased for plantation purpose were not for self consumption but ultimately were for resale, and primarily it was for a commercial purpose, with a view to make profit. It was also noticed by the National Commission that Saplings were planted on large scale basis and since such kind of plantation was with a view to earn profit, the dispute was not cognizable by the Consumer Forum.

Paras 13 and 14 of the judgment are relevant from our point of view and they may be quoted as below:-

"13. In the facts and circumstances of the case, the goods purchased were not for self-consumption, but ultimately were for resale, and primarily it was for commercial purpose, with a view to make profit. Nobody undertakes plantation of 1800 poplar trees for sale (resale) in full or part without the aim of earning profit. Nobody takes up any such activity in 9 acres of irrigated land for sale-employment."

"14. In the aforementioned circumstances, in our view, the complainant will not fall within the definition of consumer as per law settled on subject by this Commission and also by the Hon'ble Supreme Court in the judgment cited earlier in view of which Consumer Fora would not have entertained this complaint. Accordingly, this appeal is allowed, complaint is dismissed."

Sri M.H.Khan appearing on behalf of the farmers has referred to an earlier decision of the NCDRC in "Laxmi Agriculture Seed Store versus Doop Singh and others, 1(1995) CPJ 45 (NC)" and contended with reference to it that purchase of seed is a consumer dispute and since the dispute in the present set of cases was similar in nature, the preliminary objection raised by the company is not sustainable. A perusal of this decision would reveal that sun flower seeds were purchased from the seed store and since it was a matter confined to the issue of purchase and sale, the dispute was held to be

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a consumer dispute not falling within the category of commercial purpose. However, this case is distinguishable from the case of M/s WIMCO Limited. As settled by the National Commission in Ashok Sekhon's case it will be of no help to the complainants particularly when the disputed issues involved in two cases were not similar in nature. In the case of Doop Singh and others there was no agreement between the farmers and the seed store for repurchase of plant while it was so between M/s WIMCO Limited and Ashok Sekhon and others. The issue in Ashok Sekhon's case had to be in operation for eight long years according to the terms and conditions of the contract and M/s WIMCO Limited had to repurchase the plants with eight years of life after they had been grown and nursed by the farmers. Therefore, we have to follow the decision of the National Commission in M/s WIMCO Limited case (supra) and hold that the complainants had purchased the poplar plants with the financial aid of NABARD under a contract to resell the grown up trees to M/s WIMCO Limited. As a matter of fact Sri Rajesh Chadha's contention appears to be logical that the position of the company was that of a prospective purchaser as the farmers agreed to resell their trees to the company which is engaged in manufacturing of match sticks and it is widely known that poplar trees provide the best product for the purpose of manufacturing match sticks. We are therefore, of the considered view that the complainants who had cultivated the plantation farming on large scale basis had done so with an aim of commercial sale to M/s WIMCO Limited. Such a transaction has to be termed to be as for commercial purpose with a view to make profit.

It is also noteworthy that the farmers in the Ashok Sekhon's case had preferred a SLP before the Hon'ble Apex court but as is evident from the order dated 30.03.2009 passed in SLP nos. 8172 and 8173 both of 2009 the appeals were withdrawn and the Apex court had granted liberty to the petitioners to file civil suit for redressal of their grievance in a court of competent jurisdiction. In the case in hand also two farmers namely Nathoo and Vishnu have filed civil suits which are still pending decision before the civil court.

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Also it cannot be lost sight of that in Ashok Sekhon's case the said petitioner had approached the National Commission for ^{Review P} revision of its judgment but the review petition was dismissed on 17.07.2008. Perhaps it would have been after dismissal of the review petition that Ashok Sekhon filed S.L.P. before the Apex court but subsequently it was withdrawn as mentioned above.


Also we have held in similar complaint cases no. 3/1997 Amar Singh versus M/s WIMCO Limited , 4/1997 Ajai Kumar versus M/s WIMCO Limited and 23/1997 Hardwari versus M/s WIMCO Limited that the kind of dispute raised before us is not a matter pertaining to consumerism.

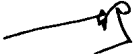
In view of the discussions held above, we are of the considered view that the preliminary objection raised by M/s WIMCO Limited is sustainable; as a consequence we hold that all these complaints are not maintainable before the State Consumer Commission.


As the complaint cases no.31/1996 and 36/1996 have been filed by the same complainant, Sri M.H.Khan, learned counsel for the complainant does not press complaint case no.31/96 which was received by post and the same is dismissed as not pressed.

In the result, all these complaints are dismissed, however, with a liberty to all the complainants to seek redressal of their grievance in a civil court of competent jurisdiction.

The judgment shall be placed on the record of Complaint case no. 31/1996 while its copy will be laid on the record of Complaint case nos. 36/1996, 122/1996, 22/1998, 23/1998, 24/1998 and 127/1999.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


26.3.10
(RAM PAL SINGH)
MEMBER