

A.F.R

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
UTTAR PRADESH LUCKNOW

COMPLAINT CASE NO. 97 OF 2013

M/s Shanti Sugar Industries, situated at Uledha  
through its Proprietor Ajay Kumar Maheshwari  
S/o late C.P. Maheshwari,  
Resident of Chandpur District Bijnor

... Complainant

Versus

1. National Insurance Company Limited  
Branch office situated at Alipur Chopla,  
National Highway Gajraula  
Distt. Amroha (U.P.),  
through its Branch Manager
2. National Insurance Company Limited  
Regd. Head Office situated at 3 Middelton Street  
Kolkatta 700071 Post Box No. 9229  
through its Director

...Opposite parties

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT  
HON'BLE MR. UDAI SHANKER AWASTHI, MEMBER

For the Complainant : Sri Sarvesh Kumar Sharma , Advocate  
For the Opposite parties : Sri Alok Kumar Singh, Advocate

DATED: 31-08-15

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

The instant complaint has been filed by the complainant against the opposite parties for the following reliefs:-

1. Direct the opposite party to pay sum of Rs.93,51,853/- towards the loss suffered alongwith appropriate rate of interest w.e.f. 30.07.2012 till the date of payment.
2. Direct the opposite party to pay appropriate compensation, damages and punitive damages on account of mental agony suffered by the complainant on account of the arbitrary repudiation of claim.
3. Direct the opposite party to pay sum of Rs.1,00,000/- towards costs of litigation.





4. Grant such other relief or reliefs as this Hon'ble Commission deems fit in the circumstances of the case and in the interest of justice and equity.

This complaint of the complainant has been filed to highlight the gross deficiency in services of the opposite parties, who have repudiated the claim made by the complainant in an arbitrary and unreasoned manner, going against the terms and conditions of the Insurance Policy and as also the established principle of law.

The complainant is sole proprietorship concern, engaged in the manufacturing of Khandsari sugar, rab, gur rasket, gur badda etc. having its unit at Village Kareem Nagar, Allies Uledha, District Bijnor having two processing sections one housing the Khandsari sugar unit and the other housing the rab conversion facility which is used for the purposes of production of Gur Rasket and Gur Badda. The opposite parties through their agents approached the complainant and after detailed inspection of the factory premises and complete satisfaction issued an insurance policy for Rs.8,00,00,000/- effective from 14.03.2012 to the mid night of 13.03.2013. The complainant paid a sum of Rs.87,481/- towards premium for the said policy which covered Standard fire, Special perils and included spontaneous combustion and STFI. In the night of 28 and 29 July 2012 the supervisor of the complainant found that the rasket prepared from the rab of the larger mound did not set and was not of desired specification. The complainant immediately called the Chemist Mr. M.K. Verma and got the purity of rab checked. On checking the purity of rab Mr. Verma found that it was merely to be 40% which was much lower than the normal which is 60%. When the temperature of this larger mound was measured in the morning of 30.07.2012, it was found to be much higher being 50 degree centigrade and a burning smell accompanied by gaseous evolution was also felt. The complainant vide letter dated 30.07.2012 informed the opposite parties about burning smell coming from the larger mound containing 10,000 quintal rab and the valuation of estimated damage to be Rs.1,50,00,000/-. The opposite parties conducted a joint survey of the factory premises on 08.08.2012 almost one week after the said incident and advised the complainant to take all precaution to prevent further deterioration. The complainant submitted Fire Claim/Spontaneous Combustion Form on 14.10.2012 giving details of the losses suffered. As the opposite parties were adopting dilatory tactics in sending the report of the sample the complainant on 11.10.2012 sent the samples of damaged



rab and normal rab to an independent agency, the National Sugar Institute Kanpur the said institute sent its report on 07.11.2012 stating that from the appearance of the affected rab sample and the drop in purity (being 22.86%) possibility of spontaneous combustion may not be ruled out. This report was also sent to opposite parties who on receiving the said report and after thought sent the samples to a private institute namely Sri Ram Institute For industrial research who submitted it report on 26.11.2012. It is submitted that the report of Sri Ram Institute For Industrial Research not only states that the percentage of sugar had decreased in the affected rab as compared to unaffected rab but the significant increase of ash content in the effected rab as compared to the correct rab makes it amply clear that the loss in rab had occurred due to spontaneous combustion. Thereafter certain correspondence took place between the parties and the opposite parties without noticing the discrepancies in the survey almost four months after the letter dated 22.01.2013 and more than 9 months of the occurrence of the incidence vide impugned letter dated 13.05.2013 repudiated the claim of the complainant on the ground that the claim does not fall within the purview of the coverage's of the insurance policy and that though the policy covers peril of fire including fire due to spontaneous combustion, but in the subject case there was no fire/combustion. The opposite parties while repudiating the claim of the complainant has lost sight of the fact that losses were suffered by it on account of internal combustion in the rab.

The complainant has pleaded that in the above facts and circumstances, there is deficiency in the services provided by the opposite parties who has repudiated a genuine claim of the complainant which was covered under the insurance policy availed by it and thus the opposite parties are liable to suitably compensate the complainant. The complaint is not barred by limitation and may be allowed for the relief claimed as above.

The opposite parties have filed their written statement admitting some allegation and denying also some allegations levelled by the complainant. It is further pleaded by the opposite parties that for the storage of rab/molasses, the insured has 17 open top underground tanks. There was one large tank of 11428 quintals storage capacity which was housed in separate building. The building has roof of G I sheets supported on MS trusses and walls of burnt bricks with opening for ventilation and in the subject



claim, the insured reported damages in the stocks of rab stored in the large tank. The insured did not lodge any police report so far nor the alleged incident has been reported in news papers which makes the claim of the complainant very doubtful. The surveyor looked around the building and inspected the ventilators at the wall of subject building and no sign of any fire or smoke or flue gas marks was found in the surrounding vegetation. The insured in their statement of occurrence did not report occurrence of any fire or combustion related activity in the affected material, which attracted the attention of nearby workers. There was no mention of any smell of burning, emanation of smoke of fire, violent agitation in the liquid stock of Rab etc. in the statement given by the insured before the surveyor. The sole basis of the insured of claiming the loss was that when the material was used in the process, it did not produce the finished good Rasket of standard specification.

It is further pleaded on behalf of the opposite parties that the insured has not suffered any loss within the terms and coverage of Standard Fire and Special Peril Policy as occurrence of loss by an insured peril is not established and thus there is no deficiency in service in repudiating the claim, which was not at all covered under the present policy and the present complaint lacks merit and is liable to be dismissed with heavy costs.

The complainant has filed following documents in support of its case alongwith the complaint:-

1. Anneuxre-1 Photocopy of insurance policy no. 460806/11/11/3300000268 for Rs.8,00,00,000/- effective from 14.03.2012 to midnight of 13.03.2013.
2. Anneuxre-2 Photocopy of letter dated 30.07.2012 sent by the complainant to opposite parties intimating that burning smell was coming from larger mound containing 10,000 quintals of rab.
3. Anneuxre-3 Photocopy of site inspection report dated 08.08.2012 conducted by Sri. S.K. Agarwal.
4. Anneuxre-4 Photocopy of letter dated 29.08.2012 sent by the surveyor to the complainant asking various documents.
5. Anneuxre-5 Photocopy of letter dated 11.10.2012 sent by the complainant to the opposite parties informing about letter sent by the complainant to Director, National Sugar Institute, Kanpur.

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6. Anneuxre-6 Photocopy of letter 14.10.2012 sent by the complainant to the opposite parties thereby sending required documents.
7. Anneuxre-7 Photocopy of claim form dated 14.10.2012 giving details of the losses suffered.
8. Anneuxre-8 Photocopy of report dated 07.11.2012 of National Sugar Institute, Kanpur.
9. Anneuxre-9 Photocopy of letter dated 06.12.2012 of the surveyor to the complainant.
10. Anneuxre-10 Photocopy of the report procured by the Opposite parties from Sriram Institute for Industrial Research, Delhi.
11. Anneuxre-11 Photocopy of letter dated 12.12.2012 sent by the complainant to National Sugar Institute enclosing report of Sriram Institute of Industrial Research, Delhi.
12. Anneuxre-12 Photocopy of letter 09.01.2013 sent by NSI, Kanpur to the complainant reiterating that the incidence occurred due to spontaneous combustion.
13. Anneuxre-13 Photocopy of letter dated 22.01.2013 sent by the complainant to the opposite parties reiterating the sequence of events that took place.
14. Annexure-14 Photocopy of application made by the complainant to the opposite parties asking for final report submitted by the surveyor.
15. Annexure 15 Photocopy of the surveyor report.
16. Anneuxre-16 Photocopy of letter dated 13.05.2013 of the opposite parties repudiating the claim of the complainant.

The complainant has also filed application for proceeding ex-parte in view of Section 13(2)(ii) of the Consumer Protection Act supported with an affidavit of Sri A.K. Maheshwari, proprietor of the complainant firm.

The opposite parties have also filed evidence in the shape of affidavit of Sri Ram Autar, Deputy Manager, of the Regional Office of National Insurance Company reiterating the allegations made in written statement by them and submitting that it is crystal clear that the insured has not suffered any loss within the terms and coverage of Standard Fire and Special Peril Policy as occurrence of loss by an insured peril is not established and thus there is no deficiency in service in repudiating the claim



which was not at all covered under the present policy and the present complaint is liable to be dismissed with heavy costs.

The complainant has filed its written arguments reiterating the contents made in the complaint case and relied upon the following case law:-

1. "Dr. J.J. Merchant and others versus Srinath Chaturvedi reported in (2002) 6 SCC page 634"
2. "Fairgrowth Investment Limited versus Custodian reported in (2004) 11 SCC page 472
3. "Anshul Aggrawal versus New Okhla Industrial Development Authority, reported in IV(2011) CPJ 63 (SC)"
4. "State Bank of India Versus B.S. Agricultural Industries (I) II (2009) CPJ 29 (SC)"
5. "P. Nirmala Devi Versus P. Venkateswar Rao and another reported in I (2012) CPJ 435 (NC).
6. "Dwarka Dheesh Investment versus N.K. Bhatia and another reported in I(2012) CPJ 466".
7. "Damodaran Pillai and others versus South India Bank Limited reported in (2005) 7 SCC at page 300."
8. "Kajpipla Cooperative Housing Society Limited versus Magic Properties Private Limited and another reported in 2014(1) CPC at page 197."
9. "TATA AIG General Insurance Company Limited versus Kanan Knitwear, Revision no. 4766 of 2013 decided on 06.01.2014"

The opposite parties have also filed written arguments reiterating the contents made in the written statement. It is further submitted on behalf of the opposite parties that there is no deficiency in service in repudiating the claim which was not at all covered under the present policy and the present complaint is liable to be dismissed with heavy costs.

We have heard Sri Sarvesh Kumar Sharma, learned counsel for the complainant and Sri Alok Kumar Singh , learned counsel for the opposite parties and perused the entire record.



As per contention of complainant, there is no dispute with respect to the quantity of raab stored by the complainant in the factory. There are three reports on record to establish that the purity of the product was dropped. It is admitted case that the sample taken was provided to the complainant as well as the same was also retained by the surveyor. The first report which is available on record is the report dated 07.11.2012 of the National Sugar Institute which reads as under:

*Regarding drop in purity of the rab, it may occur due to various reasons including spontaneous combustion. Under favourable conditions, spontaneous combustion may occur causing drop in purity with charring of stored mass. In the instant, looking to the appearance of the affected rab sample and drop in purity, possibility of spontaneous combustion may not be ruled out.*

Another report is dated 26.11.2012 of Shriram Institute for Industrial Research which mentions as under:

*Ash% by mass*

*4.3 and 5.8*

Third Report is dated 19.01.2013 of the National Sugar Institute which is prepared after considering all the aforementioned Test Reports:

- 1. Regarding difference in the values for the rab samples analyzed by the institute and M/s Shri Ram Institute for Industrial Research, Delhi, it may be mentioned that the rab samples were neither drawn by the institute nor is aware about the condition of storage till they were analyzed and hence no precise comments can be offered. The analysis for the given parameter has been carried out by the institute as per standard code and practice.*
- 2. Regarding possible causes of deterioration, you may refer our earlier letter of even no. dated 7<sup>th</sup> November, 2012. It was informed vide referred letter that from the appearance of the affected rab sample resembling charred mass and significant drop in the purity, **it appears that the incidence occurred due to spontaneous combustion.***

The report clearly indicates that the National Sugar Institute after comparing all the reports was of conclusive opinion that the loss is occurred due to spontaneous combustion. There is no specific denial of the fact that there was spontaneous combustion at the relevant period of time as report of NSI has not been challenged by the opposite parties and even there is no affidavit of the surveyor or the officers who visited and conducted the joint inspection. The opposite parties have failed to support the letter of repudiation by filing cogent piece of material evidence except the report of the surveyor, wherein the complainant provided the log sheet showing the



temperature of Rab in various tanks since 01.12.2011 to 05.08.2012. The Policy document is titled as Standard Fire and Special Perils Policy effective from 14.03.2012 to 13.03.2013 extending to cover Spontaneous Combustion as well as STFI. Thus the policy duly covered the peril of spontaneous combustion.

It has been contended by the opposite parties that since there is no flame or fire in the affected material nor any sign of burning therefore the complainant's case is not covered under spontaneous combustion. In this reference pronouncement of the Hon'ble National Commission in *Roshan Lal Oil Mills Limited versus United India Insurance Company Limited III (2008) CPJ 137 (NC)* has been referred wherein the Hon'ble Commission observed:

*Learned Counsel for the Insurance Company heavily relied upon the slip attached to the policy covering spontaneous combustion and submitted that as per the term even for spontaneous combustion there should be fire.*

*"SPONTANEOUS COMBUSTION*

*In consideration of the payment by the Insured to the Company of additional premium of Rs. .... the Company agrees notwithstanding what is stated in the printed Exclusion of this policy shall extend to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous Combustion."*

*N.B.: The expression 'by fire only' in the endorsement above must not be omitted under circumstances."*

*Firstly, it is to be stated that under Item No. 8 of the policy spontaneous combustion is covered for which additional premium is recovered. Secondly, the aforesaid term is apparently vague. It provides that for consideration of additional premium the Company agrees, "notwithstanding what is stated in the printed exclusion of this policy shall extend to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous combustion."*

*By a bare reading of this clause, it would be difficult to conclude what it exactly conveys. It is required to be read down as—*

*'This policy shall extend to include loss or damage by fire only', or 'loss or damage to the property insured caused by its own fermentation, natural heating or spontaneous combustion'.*

*In any case, if it was intended to cover only loss or damage by fire, there is no question of taking additional premium, because the first part of the policy itself provides that it gives coverage by loss or damage by fire.*

*Further, it makes it clear that there is insurance coverage in case of damage caused by its own fermentation, natural heating or spontaneous combustion.*





Therefore, this condition apart from fire covers damage caused by the aforesaid three causes. In the report submitted by the Surveyor, he has quoted the opinion given by National Chemical Laboratory (Council of Scientific and Industrial Research), which, inter alia, provides that the damage was caused by natural heating. The relevant part of the report is as under:

"Now after careful consideration of weather conditions on March 17, 1997 at 12.30 p.m. it is concluded the main cause of damage is temperature due to the sun which burn the soya seed contained in galvanized iron corrugated (GIC) silo. Due to high temperature at daytime the soya material must have absorbed heat and transferred towards central portion. Thus creating high temperature at the middle portion of silo, which could burn the volatile oil content of soya seeds. After considering all the data on damaged seeds and fresh seeds it is the rise in temperature of silo has damaged the seeds which have turned black with loss in oil content".

Further, it is settled law that contract of insurance is based upon good faith. It is the duty of the insurers and their agents to disclose all material facts within their knowledge since obligation of good faith applies to them equally with the assured [(Re. M/s. United India Insurance Co. Ltd. v. M.K.J. Corporation, (1996) 6 SCC 428)]. If the insurance coverage was not extended even by taking additional premium for the damage caused by spontaneous combustion/natural heating which may not result in fire, it ought to have been clearly stated.

Secondly, if the contract is vague, benefit should be given to the insured. The exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused due to fire. [B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd., (1996) 4 SCC 648].

Finally, it is to state that it is high time for the Insurance Company to have terms clearly defined in the insurance policy with a reasonable clarity and not to continue with the old forms which terms are vague."

20. Apart from the aforesaid reasons stated in the said judgment, the policy cover in the present case specifically provides insurance cover for spontaneous combustion. In any case, the alleged endorsement provides that notwithstanding what is stated in the printed exclusions of this policy to the contrary, the insurance cover by this policy shall extend to loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous combustion. So loss due to fire is one part and the second part covers loss due to fermentation, natural heating or spontaneous combustion.

The judgment passed by the Hon'ble National Commission in *Consumer Education and Research Society and another versus Iffco-Tokio General Insurance Company Limited and another II* (2013) CPJ 142 (NC) is also referred wherein it has been observed:

8. Learned Counsel for the complainant pleaded that the issue raised by



learned Counsel for the OPs is no more *res integra* as it is concluded by the decision rendered by this Commission in the cases of *M/s. Roshanlal Oil Mills Ltd. v. M/s. United India Insurance Co. Ltd.*, I (1992) CPJ 293 (NC), *Saraya Sugar Mills Ltd. v. United India Insurance Co. Ltd.*, II (1996) CPJ 6 (NC) and *Murli Agro Products Ltd. v. Oriental Insurance Co. Ltd.*, I (2005) CPJ 1 (NC).

9. *In the case of Murli Agro Products Ltd. v. Oriental Insurance Co. Ltd., similar clause of insurance policy came up for interpretation before the five members' Bench of this Commission. In the said judgment, the Commission after analyzing various judgments on the issue came to the conclusion that by accepting the additional premium the Insurance Company did extend the policy cover in respect of loss caused as a result of examine due to its own fermentation, natural heating or spontaneous combustion. Relevant portion of the aforesaid judgment is reproduced thus:*

*"8. In the case of Saraya Sugar Mills, after considering the similar terms of the policy, this Commission arrived at the conclusion that if fire was required for giving the insurance coverage, then there was no necessity of taking an additional premium for spontaneous combustion.*

*The relevant part of discussion is as under—*



*'We have heard the parties and gone through the records. The relevant facts are not in dispute. The molasses of the complainant in Tank No. 1 were burnt and solidised due to auto heating and spontaneous combustion. The Insurance Company's case is that as there was no fire due to spontaneous combustion therefore the loss was not covered under the policy. Thus the fate of the case entirely hangs upon the definition of 'combustion, spontaneous combustion and fire'. The definition of combustion and spontaneous combustion was considered by this Commission in *M/s. Roshanlal Oil Mills Ltd. v. M/s. United India Insurance Co. Ltd.*, I (1992) CPJ 293 (NC). It was observed:—*

*In scientific literature combustion is defined as under—*

*'The burning of any substance, whether it be gaseous, liquid or solid. In combustion, a fuel is oxidized evolving heat and often light....'*

*The combustion of solids such as coal and wood occurs in stages. First, volatile matter is driven out of the solid by thermal decomposition of the fuel and burns in the air. At usual combustion temperature, the burning of the hot, solid residue is controlled by the rate at which oxygen of the air diffuses to its surface.....' (Mc-Graw Hill Encyclopaedia of Science and Technology, New York, Vol. 3, 1982).*

*Another test defines combustion as under—*

*'The term combustion signifies the process of burning associated generally with fire, flame, the generation of heat, and certain products of reaction'. (Encyclo-paedia Dictionary of Physics, Chief Editor Thewlis, Pergamon Press, Oxford, 1961)'.  
 *

*As noticed above, the case of the Insurance Company is that auto combustion/spontaneous combustion did not cause fire. Therefore, the loss is not covered under the policy. 'Fire' had been defined in Chambers 20th Century Dictionary as follows—*

*'the heat and light of burning : a mass of burning matter, as of fuel in a grate : flame or incandescence : a conflagration : firing : fuel: a heating apparatus : heat or light due to other causes than burning.'*

*In the Concise Oxford Dictionary the meaning of 'fire' has been given as follows—*

*'Active principle operative in combustion in which substances join chemically with oxygen in air and usu. Give out bright light and heat; flame, incandescence.'*

*From the above definition of fire given in the two dictionaries, it is clear that fire need not necessarily be accompanied by flame. Fire is a form of heat energy which cause smouldering, burning, heating, melting and perhaps some few more words.*

*The complainant wrote a letter dated 6th February, 1991 to the opposite party stating—*

*'We would like to inform you that molasses season 1990-91 stored in covered Pucca Tank No. 1 is overflowing due to high temperature and excess foaming in spite of taking best precautions.'*

*A Telegram was sent by the complainant to Excise Commissioner and Controller of Molasses, U.P. and Collector, Central Excise, Allahabad and its copy was also sent to the opposite party. The telegram reads as follows—*

*'Temperature of Molasses Tank Number One reached eighty five degree centigrade despite all efforts of cooling and controlling it () Auto combustion appears to have started.'*

*This telegram was followed by the complainant by means of letter dated February 12/15, 1991 addressed to the Excise Commissioner and Controller of Molasses, U.P., Allahabad and its copy was sent to opposite party. Thus the case of the complainant is that temperature of the molasses tank had risen due to auto combustion by which the molasses stored in Tank No. 1 was burnt and solidised. While repudiating the claim the opposite party attributed the damage to spontaneous combustion without fire. From the definitions of terms 'combustion' and 'spontaneous combustion' and the dictionary meaning of 'Fire', it would only be natural to presume that the damage to the stock of molasses has been caused by fire arising from spontaneous combustion.*

*The complainant has paid additional premium at the rate of 0.25 per thousand for spontaneous combustion over and above the basic rate. If the basic rate for the damage by fire simplicitor covered the risk there was no precise purpose of charging additional premium for spontaneous combustion. As remarked in*



*Roshan Lal's case (supra), by this Commission if the contention of the Insurance Company is to be accepted it would mean that the risk 'spontaneous combustion' is merely tautological inasmuch as it already falls under 'Fire' for which basic premium has been prescribed. We have not been able to understand why the additional premium for 'spontaneous combustion' was charged if the loss was payable only if it leads to fire.'*

9. *Against that judgment, Civil Appeal No. 15376 of 1996 was filed before the Supreme Court. That appeal was dismissed on 17th February, 1997.*
10. *In Roshanlal Oil Mills Ltd. v. M/s. United India Insurance Co. Ltd. (supra), this Commission has also observed—*

*'We may, further, observe that if it was the intention to exclude damage by spontaneous combustion in the pre-ignition stage i.e. combustion without fire as contended by the Respondent, this ought to have been stated much more clearly and directly. In any case, it has already been observed that the language used in the insurance policy is unqualified and the rejection of the insurance claim by the respondent was not justified in terms of the insurance policy.'*

*Similar views are taken by the State Commissions.*

11. *It is to be stated that against the judgment rendered by this Commission in Roshan Lal Oil Mills Ltd. the Insurance Company has preferred an appeal before the Supreme Court. The Apex Court has allowed the same and remanded to this Commission for fresh hearing in accordance with law, in the light of the observations made in previously, the said observation deals with only non-consideration of the Surveyor's report [Re: M/s. United India Insurance Co. Ltd. v. Roshanlal Oil Mills Ltd., (2000) 10 SCC\*19].*
12. *Hence, we have to decide as to whether there is any justifiable ground for taking a different view?*
13. *For the reasons stated hereinafter we are not inclined to take any different view—*

- (a) *Firstly, undisputedly, if the damage to the property is because of the 'fire, for any reason', there is insurance coverage. The exclusion clause does not provide that loss or damage caused by fire on account of 'spontaneous combustion' is excluded. Reading the term as it is, it can be held that what is excluded is loss or damage caused by spontaneous combustion which may or may not cause fire or flame.*
- (b) *Secondly, for the peril which is excluded, namely, the spontaneous combustion, insurance coverage is given, i.e. to say, if the insured property is destroyed or damaged by spontaneous combustion the Insurance Company is liable to pay to the insured the value of the property. Therefore, it can be stated that it is agreed that insurance*



coverage is given for spontaneous combustion which could be Item 7, as per the policy which covers damage by such items namely fire, lighting, explosion, etc.

- (c) Thirdly, recovery of additional premium indicates the nature of the contract that subsists between the parties. That contract cannot be of giving insurance coverage only in case of damage by fire. If that contention is accepted, the object and purpose of payment of additional premium is frustrated. Recovery of additional premium indicates acceptance of risk by the Insurance Company for the perils contemplated. This aspect, to some extent, is discussed while considering the premium in general in Halsbury's Laws of England, Vol. 25 (fourth edition), pr. 440, wherein it has been, *inter alia*, observed—

'.....In making their assessment insurers normally work on the basis of an average of their previous experience of comparable risks, increasing or perhaps reducing the figure according to their estimate as to whether the graph of the risk is tending or likely to rise or fall. The rate of premium in fact charged may give rise to important inferences. The materiality of a representation which has been made may be inferred from a reduced rate of premium being charged. Similarly, ignorance on the part of the insurers of some matter supposed to be well known may be inferred if they charge no more than the ordinary rate of premium, while an exceptionally high rate of premium may be indicative of their acceptance of the risk as hazardous without requiring disclosure of the precise facts making it so.'

In the case of *Hanil Era Textiles Ltd. v. Oriental Insurance Co. Ltd. & Ors.*, 1 (2001) CPJ 1 (SC)=88 (2000) DLT 623=VIII (2000) SLT 500=(2001) 1 SCC 269, the Apex Court has referred the aforesaid paragraph from the Halsbury's Laws of England and has, *inter alia*, observed that when the premium is thus demanded and collected at a higher rate, it is an indication regarding the nature of the contract that subsists between the parties, namely, that the insurer was aware of the higher risks involved.

- (d) Fourthly, if the contract is vague, the intention of the contracting parties is to be gathered from the surrounding circumstances or the nature of the contract. In the present case, considering nature of contract it is clear that additional premium was taken from the insured so as to cover loss or damage to the property by spontaneous combustion. Therefore, also, Insurance Company is liable to pay the damage suffered by the Complainant because of 'spontaneous combustion'.

14. Therefore, acceptance of additional premium for spontaneous combustion leaves no doubt that insured accepted to cover the said risk. Otherwise, there was no necessity for taking additional premium.

The learned counsel for complainant goes to contend that another very vital



aspect of the complaint case is that the insurance company was having ample opportunity to file the affidavit of the responsible officers who conducted the joint inspection and also affidavit of the surveyor who alleges that he Physically tested and verified the affected material, however the insurance company did not choose to file the affidavit of evidence in the instant case, reliance is placed on the judgment of the Hon'ble National Commission in *National Insurance Company Limited versus Mohd. Ishaq and Others I (2012) CPJ 538 (NC)*, wherein it was observed:

5. *Further, both Fora below have observed that the OP/Insurance Company relied on the report of the Surveyor according to which the requisite documents were not furnished by the Complainant in spite of several reminders being addressed to him to furnish the same. Yet, the Insurance Company did not file the affidavit evidence of the Surveyor to substantiate this point. In the absence of the same, no reliance has been placed by the Fora below on the report of the Surveyor.*
6. *We have perused the records and heard Mr. Kishore Rawat, for the revision petitioner, National Insurance Company. Learned Counsel argued that there was no deficiency of service as the reason for non-settlement of the claim was failure on the part of the insured himself to submit the requisite documents. However, he conceded that while this plea was based on the report of the surveyor, his affidavit was not filed before the District Forum. We would like to note that the law on this point has been clearly laid down by the Hon'ble Supreme Court of India in Mahyco Seeds Company Ltd. v. Basappa Channappa Mooki & Others, Civil Appeal Nos. 2425-2428 of 2008, decided by the Hon'ble Supreme Court of India on 21.7.2010, in the following terms:*

*"It goes without saying that the person filing the complaint must verify which part of his assertion is true to his knowledge—which is true to his information or is based on records. Even though under the provisions of the said Act the procedure to be followed for adjudication on the complaint is summary and does not call for any complicated production of the evidence, but the basic rules of pleading and evidence have to be followed and the complainant must support his complaint with some verification so that person, against whom such complaint is made, knows what charge he has to meet. This is the basic requirement of natural justice."*

*Therefore, in our view, the District Forum as well as the State Commission have very rightly rejected the report of the Surveyor on the ground that it is not supported by the affidavit of its author.*

With respect to the quantum of insurance amount it is submitted with regard to the assessment of loss which has been assessed by the surveyor in its report that the complainant is entitled for the award of Rs. 8291089/- as loss under the Policy of Insurance. With respect to the compensation and damages it is submitted that this is a



fit case for the award of compensation and damages, in view of the deficiency in service committed by the opposite parties by repudiating the genuine claim of the complainant and for compelling the complainant to involve in multiple set of litigation.

We found that there is not so much controversy with regard to the loss to the complainant as the surveyor of the opposite party has himself assessed the loss to the complainant to the tune of Rs.82,91,089/- against the loss claimed by the complainant to the tune of Rs.93,51,853/-. The major controversy raised by the surveyor as well as the opposite party relates to the fact that as per opinion of the surveyor, the insured has not suffered any loss within the terms of coverage of Standard Fire & Special Peril Policy as occurrence of loss under insured peril is not established. As per contention of opposite party there was no sign of any heating or rise in the temperature of the liquid material in the tank. The insured has stated that smell of burning was coming out of the Rab stored in the large tank but during visit the surveyor did not find any sign of caramelizing, burning or charring of the sugar or smell of such chemical activities in the stock. However, in this regard there is no dispute that spontaneous combustion is covered in the insurance policy in this case. Both the parties have relied on the testing reports of experts in this regard. The Sugar Technologist since conducted the test in insured's own laboratory and it was found that purity of the material had reduced and was lesser than the normal thereby dropping the standard atleast 60% level to 40% level, therefore, both the parties got the sample analysed by the two different experts. The insured got the sample tested by National Sugar Institute, Kanpur wherein the purity of sample containing sound material was 50.58% while the purity of sample containing spoiled material was found 22.86%. The reasons for drop in the purity of the Rab is mentioned that it may occur due to various reasons including spontaneous combustion. Spontaneous combustion may occur, causing drop in the purity with charring of the stored mass and in this case looking to the appearance of the affected Rab sample and drop in purity, the possibility of spontaneous combustion may not be ruled out. This fact was reported by National Sugar Institute on 07-11-2012 as per analysis of Rab sample and further vide letter dated 09-01-2013 the National Sugar Institute clearly established regarding possible causes of deterioration in the Rab and in reference to their earlier opinion dated 07-11-2012 that from the appearance of the affected Rab sample resembling charred mass and significant drop in the purity, it appears that the

incidence occurred due to spontaneous combustion. Apart from it the opposite party has also got the sample tested by Shriram Institute for Industrial Research, Delhi and as per report dated 26-11-2012 of Sriram Institute for Industrial Research, it is submitted by the opposite party that there was only marginal increase in ash content in the affected sample while content of total reducing sugar and sucrose in the affected Rab were drastically reduced. As per contention of learned Counsel for the opposite party these findings rules out occurrence of internal combustion or spontaneous combustion in the affected material, as such reported chemical activities in the material would have manifested in the form of significant rise in the ash content of the affected sample and there was inversion of sucrose, reducing the value (i.e. Purity) from higher level to lower level (from 45% to 25.6% by mass as per test report of Shriram Laboratories) and as per contention of learned Counsel for the opposite party the corresponding quantity in terms of sugar in the total affected Rab quantity of 10,357 quintals works out to be more than 2,000 quintals and the inversion of such large quantity of sugar would have resulted into substantial rise in the ash content of the sample and also would have shown itself in the form of alarmingly abnormal and noticeable disturbance at and around the site. Looking into the contention with regard to both the reports of the experts in this regard, we are of this view that the report of National Sugar Institute, Kanpur is more authentic wherein the spontaneous combustion has been established while as per report of Shriram Institute for Industrial Research there is no authentic opinion has been given but since the ash contents in the affected samples have been found and there is no reason assigned except to spontaneous combustion for the ash contents, therefore, the report of Shriram Institute for Industrial Research does also not ruled out the spontaneous combustion. Hence the factum of spontaneous combustion is very well established in this case and since the spontaneous combustion is very well covered in the policy, therefore, the loss occurred to the complainant should have not been denied by the opposite party and the repudiation of claim of the complainant for the loss even assessed by the surveyor should have been allowed by the opposite party and thus we are of this view that this complaint is worth allowed for the claim of the complainant.

Though the learned Counsel for the opposite party raised some issues of less importance too in this regard that the insured did not lodge any police report and did not need to call the fire brigade and the surveyor did not mark any visible mark or





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sign of heating or fire and claim of the loss is arbitrary but in our view these facts are not so much material in the light of the samples got tested by both the parties by the different experts. Since the case is not for fire, or of any offence, therefore, there was no need for filing any F.I.R. and calling the fire brigade in such type of cases where the loss occurred due to heating process of spontaneous combustion. So far as the question of arbitrary loss is concerned, though the complainant claimed the loss to the tune of Rs.93,51,853/- but without entering into the merit and calculation of loss as per percentage reported by experts, we are of this view that since the surveyor is an expert himself reported a sum of Rs.82,91,089/- the loss occurred to the complainant, the loss to the complainant to that extent could not be denied in this case, for which this complaint deserves to be allowed.

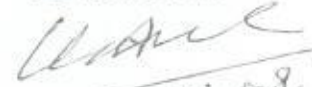
ORDER

The complaint is hereby allowed. The opposite party is hereby directed to pay a sum of Rs.82,91,089/- to the complainant within two months of this order alongwith interest @ 9% per annum from the date of this complaint till the payment is made, failing which the interest shall be payable calculating @ 14% per annum. A sum of Rs.25,000/- is further allowed to be paid by the opposite party to the complainant as litigation charges in this case.



31.08.15

( JUSTICE VIRENDRA SINGH )  
PRESIDENT



31.08.15

( U S AWASTHI )

MEMBER

Pnt.