REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7357-7376 OF 2010

M/S NANDAN BIOMATRIX LTD. …APPELLANT

VERSUS

S. AMBIKA DEVI & ORS. ….RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Civil Appeal No. 7357/2010

The instant appeal arises against the order dated 15.04.2009 passed by the National Consumer Disputes Redressal Commission, New Delhi ("the National Commission"), affirming the order dated 28.04.2008 of the Kerala State Consumer Disputes Redressal Commission ("the State Commission") setting aside the order of the District Forum, Kozhikode dismissing the complaint and remanding the matter to the District Forum for disposal on merits.

2. The brief facts leading to this appeal are as follows:

2.1 The complainant (the Respondent herein) is a small landholder who responded to the advertisements issued by the Appellant, a seed company, in 2003, regarding buyback of *safed musli*, a medicinal crop, at attractive prices. She entered into a tripartite agreement dated 15.01.2004 with the Appellant and its franchisee M/s Herbz India. As per the agreement, the Respondent purchased 750 kgs of wet *musli* for sowing from the Appellant, at the rate of Rs. 400/- per kg, and cultivated the same in her land. The Appellant was to buy back the produce at a minimum price of Rs. 1,000/- per kg from the Respondent. The Respondent lodged a consumer complaint alleging negligence and breach of contract on the part of the Appellant on the ground that the Appellant failed to buy back her produce, leading to the destruction of the greater part of the crop.

2.2 The District Forum dismissed the complaint, and held that the same was not maintainable since the Respondent was not a "consumer" within the meaning of the Consumer Protection Act, 1986 ("the 1986 Act"). On appeal by the

Respondent, the State Commission set aside the order passed by the District Forum, holding that the Respondent was a "consumer" under the 1986 Act, and remanded the matter to the District Forum for disposal on merits. It is this order which was impugned before the National Commission by way of a revision petition filed by the Appellant.

2.3 The National Commission upheld the finding of the State Commission, holding that the covenants entered into between the parties were in the nature of both sale of product and rendering of service, since the Appellant had agreed to provide wet *musli* for growing to the Respondent, supplemented by technical support and guidance from its franchisee, and had further agreed to insure the crop at additional cost. Additionally, noting that the Respondent was a small landholder owning about 1-1.5 acres of land, who had started cultivation of *musli* for eking out a livelihood for herself, the National Commission held that it could not be said that the agreement was entered into for the commercial purpose of the Respondent. The Revision Petition was dismissed with a cost of

Rs. 2,500/- imposed on the Appellant, payable to the Respondent.

2.4 The instant appeal has been filed against the above order of the National Commission.

3. Before us, learned Counsel for the Appellant, Mr. Raghenth Basant, argued that the Respondent was not a "consumer" as defined under Section 2(d) of the 1986 Act. Firstly, it was argued that the tripartite agreement envisaged buyback of *musli* by the Respondent from the Appellant, which amounted to resale, which is excluded from the purview of Section 2(d). Secondly, it was argued that the cultivation and sale of *musli* by the Respondent was for a commercial purpose and not for the purpose of earning livelihood, and hence excluded from the purview of Section 2(d).

4. Learned Counsel for the Respondent, Mr. Santosh Paul, on the other hand, argued that the cultivation of *musli* was not being done on a commercial level, but was purely on a self-employed basis done by a poor agriculturist for eking out a livelihood, and hence such cultivation did not fall within the

meaning of “commercial purpose” under the Explanation to Section 2(d) of the 1986 Act.

5. Heard the counsel on either side and perused the record.

6. Clearly, the only aspect for consideration before us is whether the Respondent was excluded from the purview of the definition of “consumer” under Section 2(d) of the 1986 Act on account of the subject transaction amounting to resale or for being for a commercial purpose.

7. It would be pertinent to begin our discussion by referring to the definition of the term “consumer” under Section 2(d) under the 1986 Act:

> “(d) “consumer” means any person who—
> (i) buys any goods, for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person ***but does not include a person who obtains such goods for resale or for any commercial purpose***; or
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any

> system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ***but does not include a person who avails of such services for any commercial purposes***;
>
> *Explanation*.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him ***exclusively for the purposes of earning his livelihood by means of self-employment***" (emphasis supplied)

8. It is relevant to note that the explanation regarding the meaning of "commercial purpose" was added vide an amendment in 1993, and was considered for the first time by this Court in ***Laxmi Engineering Works* v. *PSG Industrial Institute***, (1995) 3 SCC 583. In this case, the Court noted that even prior to the 1993 amendment, the National Commission had been taking a consistent view that was broadly in accord with the amended definition, i.e. only persons purchasing goods or availing of services for carrying on activity on a large scale, for the purpose of earning profit, would be excluded from the ambit of the definition of "consumer" [see ***Synco Textiles***

Pvt. Ltd.* v. *Greaves Cotton and Company Ltd., (1991) 1 CPJ 499; ***Oswal Fine Arts* v. *HMT***, (1991) 1 CPJ 330; and ***Secretary, Consumer Guidance and Research Society of India* v. *BPL India Ltd.***, (1992) 1 CPJ 140 (NC)].

8.1 On this basis, this Court affirmed that the amendment was only clarificatory in nature, and that though the question regarding whether the purpose for which goods have been bought or services rendered is a "commercial purpose" is to be answered on the facts of each case, a person buying goods and using them himself exclusively for the purpose of earning a livelihood by means of self-employment would be covered by the definition of "consumer" within the 1986 Act, even if such use is commercial use. In this regard, the Court in ***Laxmi Engineering*** observed:

> "**11.** ... a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression 'consumer'. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment,

such purchaser of goods is yet a 'consumer'. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., "uses them by himself", "exclusively for the purpose of earning his livelihood" and "by means of self-employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer.) As against this a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions "used by him", and "by means of self-employment" in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and

clarified by the other two sets of words." (emphasis supplied)

8.2 Notably, it was emphasized that the employment of a few persons for the purpose of assistance in the activity carried out by the purchaser would not automatically render the commercial activity as not being for self-employment and for earning his livelihood; rather, this would have to be determined from the facts and circumstances of a given case.

9. In the matter on hand, though the Appellant has sought to project that the Respondent were cultivating *musli* on a large scale and with a profit motive, we find ourselves unable to conclude that the cultivation being undertaken was for a purpose other than for eking out a livelihood through self-employment.

9.1 In matters such as the one on hand, the agriculturist buys the foundation seeds from the seed company, or the company itself reaches out and requests the farmers to generate the seeds so that it may market the same. By accepting such an offer, and after purchasing the foundation seeds from the seed company, the agriculturist, with hard labour and sweat, produces seeds to be marketed by the seed

company. Thus, the agriculturist is not reselling any product, but grows his own product by utilizing the foundation seeds. There cannot be any dispute that the agriculturist has to sell his product in the open market or to the seed company, as the case may be, in order to eke out his livelihood. In other words, the agriculturist sustains himself by selling his product. This cannot be termed as resale or activity in furtherance of a "commercial purpose" bringing him out of the purview of the definition of "consumer" under Section 2(d). Rather, it is purely for the purpose of earning his livelihood by means of self-employment.

9.2 Contrary to what the Appellant has sought to impress upon us, we find that cases such as these cannot be compared to activities undertaken by industrial concerns, for example, where the employment of raw materials to produce finished goods for sale has also been held by this Court to amount to resale or being for a commercial purpose [see ***Rajeev Metal Works* v. *Mineral & Metal Trading Corporation of India Ltd.***, (1996) 9 SCC 422].

9.3 Indeed, in the matter on hand, the Respondent is a housewife who has undertaken agricultural activity on land of 1-1.5 acres for the purpose of increasing her household income, and would perhaps not have undertaken the growing of *musli* if the Appellant had not assured a profitable price for buyback of the crop. Of course, we cannot base our conclusion on any surmise or conjecture in this regard. At the same time, in our opinion, the fact that such profitable price was guaranteed by the Appellant cannot now be relied upon to argue that the activity was undertaken by the Respondent for a "commercial purpose", so as to exclude the same from the purview of the 1986 Act.

10. We particularly find the argument untenable that the tripartite agreement would amount to resale by virtue of containing a buyback clause, and would hence exclude the Respondent from the ambit of the definition of "consumer". In this regard, we find it relevant to refer to the decision of this Court in ***National Seeds Corpn. Ltd.*** **v.** ***M. Madhusudan Reddy***, (2012) 2 SCC 506, where this Court was seized of appeals arising out of consumer complaints filed by farmers

engaged in agriculture and seed production, who had purchased seeds from the National Seeds Corporation Ltd. which had turned out to be defective, leading to below par germination. Some of these farmers had entered into agreements whereby they purchased foundation seeds from the seed company and agreed to grow seeds and sell them back to the company for profit. The company had rejected the grown seeds for being unfit for certification. While dealing with the question of whether a farmer would be excluded from the definition of "consumer" because the seeds produced by him were required to be supplied back to the seed corporation that supplied the foundation seeds, this Court, taking note of the elaboration on the scope and ambit of the expression "commercial purpose" as undertaken in ***Laxmi Engineering*** (supra), observed as follows:

> "**73.** What needs to be emphasised is that the appellant had selected a set of farmers in the area for growing seeds on its behalf. After entering into agreements with the selected farmers, the appellant supplied foundation seeds to them for a price, with an assurance that within a few months they will be able to earn profit. The seeds were sown under the supervision of the expert deputed by the appellant. The entire crop was to be purchased by the appellant. The agreements entered into between the

> appellant and the growers clearly postulated supply of the foundation seeds by the appellant with an assurance that the crop will be purchased by it. It is neither the pleaded case of the appellant nor was any evidence produced before any of the Consumer Forums that the growers had the freedom to sell the seeds in the open market or to any person other than the appellant. Therefore, it is not possible to take the view that the growers had purchased the seeds for resale or for any commercial purpose and they are excluded from the definition of the term "consumer". As a matter of fact, the evidence brought on record shows that the growers had agreed to produce seeds on behalf of the appellant for the purpose of earning their livelihood by using their skills and labour."

10.1 It is amply evident from the above that an agreement for buyback by the seed company of the crop grown by a farmer cannot be regarded as a resale transaction, and he cannot be brought out of the scope of being a "consumer" under the 1986 Act only on such ground. Thus, even in the instant case, the fact that there was a buyback agreement for the *musli* crop would not bring the Respondent outside the purview of the definition of "consumer" by rendering the buyback arrangement a resale transaction or being for a commercial purpose. We hasten to emphasise that the fact situation herein diverges from ***Madhusudan*** to the extent that in the instant case, the Respondent had the freedom to sell her

produce on the open market if she was able to obtain a better price. However, as we have already mentioned, in our opinion, this aspect would not take away from the conclusion that the Respondent had entered into an agreement for growing the *musli* crop for the purpose of earning a livelihood, since an agriculturist would always have to sell his produce in order to earn his livelihood.

11. It is pertinent to note at this juncture that the Appellant has sought to rely on several decisions rendered by the National Commission in order to argue that the Respondent cannot be regarded as a "consumer" under the 1986 Act, and we find it necessary to advert to the same below.

12. The Appellant has referred to ***Synco Textiles*** (supra), a case decided before the 1993 amendment, where the National Commission opined that large scale commercial activities would be excluded from the purview of the definition of "consumer". It was held that a person purchasing a generator used for generating electricity, to be used in an industrial concern producing oil on a large scale, would not amount to a "consumer", since the generator was being used

for an activity directly intended to generate profit. This view was upheld in ***Laxmi Engineering*** (supra) by this Court, and we see no reason to depart from the same. At the same time, the said decision cannot come to the rescue of the Appellant as the facts in ***Synco*** clearly indicated that the generator purchased was employed for production that was geared for a commercial purpose, and had nothing to do with the agricultural sector and the status of a farmer as a "consumer".

13. However, the same cannot be said with regard to the decision in ***Sakthi Sugars Ltd., Orissa* v. *Sridhar Sahoo***, II (1999) CPJ 4 (NC). In this case, the respondent farmer had entered into an agreement with the appellant corporation for financial assistance, agreeing to sell the sugarcane crop grown by him to it. The corporation, in turn, had agreed to help the farmer get a loan from specified sources for a diesel pump set and dug-well. In 1991-92, the farmer obtained inadequate output in his crop. In his complaint, he alleged that this was because he was unable to irrigate his field properly because of the lack of a dug-well and pump set, and that he had been

unable to procure a loan in this regard because of the failure of the appellant to deposit margin money for the same.

13.1 The National Commission, following the view taken in ***Fruit and Vegetable Project, New Delhi*** **v.** ***N. Sankar Reddy***, III (1994) CPJ 163 (NC) that a seller could not take the benefit of the 1986 Act, held that the farmer was not a "consumer" since he was selling his produce to the opposite party. It was also held that in any case, the issue of specific performance emanating from a contract between the parties could not be the subject matter of a consumer dispute. The Appellant in the instant case has referred to this reasoning adopted by the National Commission to substantiate its case. However, for reasons discussed below, we are of the considered view that the proposition of law expressed in ***Sakthi Sugars*** is incorrect.

13.2 To begin with, a perusal of the decision in ***Sankar Reddy***, which was relied upon in ***Sakthi Sugars***, shows that in that case, the National Commission had held that a farmer who was selling his produce through an intermediary was not a "consumer" vis-à-vis such intermediary. The complainant

therein was a horticulturist who was selling his produce to an intermediary for further sale. One of the consignments had been rejected by the intermediary for non-adherence with standards pertaining to quality and packaging, but in view of the perishable nature of the goods, the complainant requested the intermediary for help in disposal, who arranged for the sale of the consignment through an authorized commission agent for a specified price. The complaint was filed alleging that the intermediary had failed to pay the complainant the entire amount promised. On these facts, the National Commission had held that while obliging with the request of the complainant, the intermediary was acting only as an agent, and that too only in order to minimize the loss that the complainant would have suffered if the consignment remained unsold, without receiving any consideration. Thus, it could not be said that the intermediary had undertaken to render a service for consideration.

13.3 It is relevant to note that from the order of the National Commission, no material is forthcoming to the effect that the parties had entered into an agreement whereby the

intermediary agreed to render a service to the farmers regarding the further sale of their produce. Additionally, the National Commission found that even if it was presumed that the intermediary had purchased goods in terms of an agreement between the parties, the fact remained that in such transaction, it was the farmer who was a seller, and could not be deemed to be a "consumer" under the 1986 Act.

13.4 It is evident that in ***Sakthi Sugars***, there was a clear agreement between the farmer and the corporation for the latter to render financial assistance by way of help in procuring a loan, which amounted to the rendering of a service, a deficiency in which would give rise to a cause of action under the 1986 Act. Thus, the farmer was not purely a seller and was also availing of services from the corporation. In this respect, reliance on ***Sankar Reddy*** may not have been proper.

13.5 We also find that the view that a consumer dispute may not arise out of a contractual arrangement is erroneous since it falls foul of the clear stipulation under Section 2(f) of the 1986 Act that a deficiency in service may arise out of "*any fault, imperfection, shortcoming or inadequacy in the quality,*

nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

13.6 In view of the above, we find that ***Sakthi Sugars*** cannot be relied upon to argue that a farmer selling his produce cannot under any circumstance amount to a "consumer" under the 1986 Act. As we have discussed supra, in cases where the farmer has purchased goods or availed of services in order to grow produce in order to eke out a livelihood, the fact that the said produce is being sold back to the seller or service provider or to a third party cannot stand in the way of the farmer amounting to a "consumer".

14. The Appellant has also referred to the decision of the National Commission in ***Wimco Limited* v. *Ashok Sekhon***, II (2008) CPJ 210 (NC). In this case, the complainant had purchased 1800 poplar transplants for a corporation on a large scale for growing trees and selling them back to the corporation. The National Commission referred to its prior decision in ***Synco Textiles*** (supra) and the decision of this

Court in ***Laxmi Engineering*** (supra), for the principle that the "self-employment" exception to the "commercial purpose" clause was applicable only when the goods bought by the buyer were used by the buyer himself by employing himself for earning his livelihood. It was held that the planting of 1800 trees on a 9-acre field, and that too for resale, could not be said to be on a self-employment level and without a commercial purpose. Thus, the complainant was held to not be a consumer within the 1986 Act. We find that this decision is clearly distinguishable since it is evident from the facts therein that the trees were being grown for a "commercial purpose", which is not the case here.

15. Finally, we may refer to the decision in ***Prithviraj Narayanrao Chavan*** **v.** ***The National Seeds Corporation Ltd.***, [2012] SCC OnLine NCDRC 7, cited by the Appellant. This was also a case involving buyback of seeds produced with the help of foundation seeds provided by the seed company. The seed company had approached farmers to participate in its seed production programme for a variety of jute, and were assured a certain minimum procurement price per quintal of

seed produced. The area under cultivation was withdrawn from the certification of the seed company due to poor germination of crop, leading to heavy losses for the farmers, based on which consumer complaints were filed.

15.1 The State Commission in ***Prithviraj*** had adopted the view taken in ***Sakthi Sugars*** (supra) that a seller could not be treated as a consumer, to hold that since the complainants therein had entered into a buyback transaction, they were acting as sellers and hence could not be treated as consumers. This view was upheld by the National Commission, which also placed reliance upon the decision in ***Wimco*** (supra).

15.2 As we have already noticed, we find ourselves unable to agree with the view taken in ***Sakthi Sugars***. Moreover, for reasons expressed already, and particularly in view of the decision of this Court in ***Madhusudan*** (supra), we find that the National Commission in ***Prithviraj*** erred in holding that entering into a buyback transaction would preclude a farmer from taking benefit as a “consumer” under the 1986 Act.

16. Before we part with this matter, we feel constrained to note that the Indian agricultural scenario, today, is in a very

imperilled state. Agriculturists have to deal with serious environmental concerns like topsoil depletion, contamination of food, water and soil due to toxic fertilizers and pesticides, and the vagaries of the weather, which are becoming more and more severe and unpredictable as the climate deteriorates. In some parts of the country, such as Punjab, pesticides being used are toxic enough to have led to unprecedented incidence of diseases like cancer. The mechanization of farms has undoubtedly led to many advances in the food security of the country, but this has come at a grave cost.

16.1 Practices such as crop diversification and rotation, which are crucial to species diversity and thus to maintain soil health and ensure farm security, and are in-built in traditional forms of farming, are under threat from the increasing inroads being made into the Indian farm by corporates of all sizes, which come with the promise of increased yields and attractive returns. This is true with regard to the sale of seeds as well, even though Indian law protects plant material including seeds from patentability.

16.2 Most Indian farmers own only small landholdings, which require expensive inputs such as irrigation, electricity, seeds, fertilizer, and pesticide, but do not generate sufficient output to cover the costs of the same. Though the sway of seed companies over small farmers in India is, as of now, minimal, when agriculturists with such small landholdings do enter into agreements to grow crops on terms dictated by seed companies, it is in the hope of earning some profit that would offset the cost of their inputs and generate some income for the household. Often, the crops require the intensive usage of labour and mechanization. Therefore, agreements such as the one in the instant case often guarantee technical and financial assistance to the farmer in order to be able to discharge his end of the deal. Needless to say, the success or failure of the crop would make or break the income of the farmer for the entire season. This can result in situations where small and medium scale farmers find themselves trapped in contracts where they buy expensive seeds which turn out to be defective, resulting in a failed season and severe financial hardship. The problem of indebtedness further worsens the plight of the

farmer, and, all too often, manifests in the tragedy of suicide. Farmer suicides are indeed a systemic issue that has persisted, and perhaps worsened, over the last few decades.

16.3 The summary redressal available to the farmer under the 1986 Act may go a small but crucial way to provide instant relief in a sector which is already facing stress on several counts. Undoubtedly, farmers faced with grievances against seed companies, may, in suitable cases, opt for other remedies such as a civil suit, relief under the Seeds Act, 1966 (the reform of which has been under process for some time), and so on. But excluding such farmers from the purview of the 1986 Act would be a complete mockery of the object and purpose of the statute.

16.4 We are alarmed by the growing trend amongst seed companies of engaging in frivolous litigation with farmers, virtually defeating the purpose of speedy redressal envisaged under 1986 Act. In the instant case, the Appellant contested the farmers' claims before consumer fora on the preliminary point of maintainability right up to this Court, compelling small agriculturists such as the Respondents to spend unnecessarily

on litigation in order to secure relief for themselves, amounting to a sum which probably exceeds even the quantum of relief claimed. This tendency to resist even the smallest of claims on any ground possible, by exploiting the relatively greater capacity of seed companies to litigate for long periods of time, amounts to little more than harassment of agriculturists. To discourage such conduct in the future by the Appellant as well as other seed corporations, we deem it fit to impose costs on the Appellant

17. Thus, we find no reason to interfere with the order passed by the National Commission affirming that the Respondent is a "consumer" within the meaning of the 1986 Act, and dismiss the instant Appeal. The concerned District Forum shall hear and decide the complaints within a period of three months from the date of receipt of this judgment. Costs are imposed on the Appellant to the tune of Rs. 25,000/- payable to the Respondent.

Civil Appeal Nos. 7358-7376/2010

18. These appeals arise out of facts similar to Civil Appeal No. 7357/2010. Hence, they are dismissed in terms of

the order passed in the said appeal. It is made clear that the cost of Rs. 25,000/- is to be paid by the Appellant in each of these appeals, to be divided equally amongst the respondents in each appeal.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(R. SUBHASH REDDY)

New Delhi;
March 06, 2020