

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1959 OF 2019**

(Against the Order dated 31/05/2019 in Appeal No. 1187/2016 of the State Commission Uttar Pradesh)

1. NEELAM

W/O. SH. B.M SHARMA, R/O. ANORA, P.S. RAYA TESHIL  
MANT,  
DISTRICT-MATHURA  
UTTAR PRADESH

.....Petitioner(s)

Versus

1. M/S. DYNAMIC COLD STORAGE PVT. LTD. & ANR.  
THROUGH ITS DIRECTOR OFFICE AT BALDEV HATRAS  
ROAD, RASMAI NASEERPUR SADABAD, HATHRAS  
DISTRICT-MAHAMAYA NAGAR  
UTTAR PRADESH

2. SRI AMIT KUMAR

S/O. HARI MOHAN, R/O. ANORA PS RAYA TESHIL MANT  
DISTRICT-MAHTURA  
UTTAR PRADESH

3. .

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MS. VISHAKHA MITTAL, ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENTS : MR. SANJEEV SRIVASTAVA,  
ADVOCATE AND

MR. MANOJ KUMAR SINGH, ADVOCATE FOR R1

MR. TRILOK NATH SAXENA, ADVOCATE FOR R2

**Dated : 16 August 2024**

**ORDER**

1. This Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") arising from the Order dated 31.05.2019 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (the 'State Commission') in First Appeal No. 1187 of 2016. Partly allowing this appeal, the State Commission modified the Order dated 28.04.2016 passed by the District Consumer Disputes Redressal Forum, Mathura ("District Forum") in CC No. 229 of 2014, while directing OP to pay Rs.1,58,742/- to the complainant with 6% simple interest along with Rs.10,000/- towards litigation expenses.

2. For the convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. The Petitioner, Smt. Neelam, is the Complainant and the Respondents, M/s. Dynamic Cold Storage Pvt. Ltd. and Sri Amit Kumar, are OP-2 and OP-1 respectively.

3. Brief facts of the case are that the complainant, and her husband, Brij Mohan Sharma, a farmer, were approached by OP-1, a local diesel supplier, post their potato harvest, and persuaded them to store their potatoes at a newly established cold storage of OP-2. On 27.02.2011, OP-1 introduced her to the owners of OP-2, who made a promise of safe storage at competitive prices. From 02.03.2011 to 19.03.2011, the OPs took 3389 potato bags from the complainant to OP-2 cold storage. Some receipts were given to her initially and balance receipts were promised to be given later. The delayed receipts incorrectly named her husband as Amit Kumar, which was later corrected upon her objection. Thereafter, OP-2 opened account No. 188 in their books in the name of one Smt. Neelam Sharma W/o Sh. B M Sharma. The Complainant became sceptical of OP-2 intentions when its records showed fictitious withdrawals of Rs.3,59,775/-, by three bearer cheques of Rs.1,00,000/- each which she never received and Rs. 59,775/- towards vardana. On 12.10.2011, she attempted to retrieve her stored potatoes but was only given two bags. OP-2 claimed that the potatoes were withdrawn by someone named Neelam, w/o Amit Kumar. Another attempt was made on 19.11.2011 to retrieve the potatoes was similarly unsuccessful. Potatoes worth over Rs.9,00,000/- were kept with OP-2. Further, inquiries revealed that OP-1 and his wife forged her signature to encash three cheques in her name. Despite filing police complaints about the fraudulent acts, no action was taken. Aggrieved, she filed the present consumer complaint seeking Rs.9,00,000/- towards stored potatoes along with Rs. 1 lakh towards profit and Rs.50,000/- as compensation.

4. In reply, before the learned District Forum, OP-1 refuted all substantial allegations and asserted that complaint was frivolous and fraudulent. His father, Harimohan Aggarwal, and the husband of the complainant already knew each other. About 35 years ago her husband sold his village residential house, to Harimohan Aggarwal. Being familiar with Harimohan Aggarwal, her husband requested assistance in arranging a tractor for farming. OP-1 arranged the tractor but claimed no further involvement with her. Thus, dismissing all allegations against him, OP 1 prayed for the dismissal of the complaint.

5. The learned District Forum vide Order dated 28.04.2016, allowed the complaint with the following order:

### **“ORDER**

**Petition of the petitioner is allowed. OP No. 2 is directed that the 3389 bags of potatoes deposited by her in the cold storage be returned to her. In case of non return of potatoes, cost of potatoes Rs. 748969 be paid to petitioner within one**

**month along with simple interest at a rate of 6% per annum from date of filing of petition till actual date of payment, simultaneously, with the aforesaid period, Rs. 50000 /- be paid to the petitioner towards mental harassment and cost of litigation.”**

**(Extracted from translated copy)**

6. Being aggrieved by the District Forum Order, the OPs filed Appeal No. 1187/2016 and the State Commission vide Order dated 31.05.2019 allowed the Appeal and set aside the Order passed by the District Forum, with the following observations: -

**“From aforesaid description, it is clear that there is an earlier dispute of receipt of Rs. 3,59,775.00 between the appellant / OP and complainant / respondent and as per the complainant / respondent, payment of amount of aforesaid cheques has been taken by wife of OP No. 1 Savita by making her signatures.**

**Therefore, payment of cheques on account of cheating and forgery by wife of OP No. 1 is admitted. With regards to averments of cheating and forgery, it is difficult and impossible to adjudicate the same by summary proceedings under the Consumer Protection Act. The dispute related to the payment of Rs. 3,59,775.00**

**between the appellant / OP and complainant / respondent can be decided only by a civil court. Therefore, it would be correct to deduct the dispute amount of Rs. 3,59,775.00 and cold storage rent of Rs. 2,30,452.00 totalling to Rs. 5,90,229.00 from the price of potatoes. Rs. 7,48,969.00 and balance amount of Rs. 1,58,742.00 be paid to the complainant / respondent. Complainant / respondent shall be entitled to recover the said disputed amount of Rs. 3,59,775.00 by a decision from the court of proper jurisdiction.**

**On the basis of aforesaid discussions, prayer 2 and 3 of the complaint are hereby subjected to decision by a court of proper jurisdiction.**

**Based on the aforesaid discussions and on the basis of facts and documents, I am of the view that the amount ordered to be paid to the complainant for mental harassment and litigation expenses Rs. 50,000.00 be reduced to Rs. 10,000.00.**

**On the basis of above summary, the appeal is party allowed and the order of the District Forum is modified and appellant / OP is directed to pay Rs. 1,58,742.00 to the complainant / respondent with 6% simple interest from the date of filing of complaint to the actual date of payment. Simultaneously, Rs.10,000.00 be paid to her towards litigation expenses.**

**Payment of Rs. 3,59,775.00 towards price of potatoes shall be subject to the decision of the court of proper jurisdiction. Both parties are free to present their claim in the court of proper jurisdiction.**

**Cost of litigation towards this appeal shall be borne by the parties,**

**As per the provisions of S. 15 of the Consumer Protection Act, amount deposited at the time of filing of appeal be returned to the District Forum for disbursal as per this order.”**

**(Extracted from translated copy)**

7. Aggrieved by the Order of the Id. State Commission, complainant filed the present revision petition with the following prayer:

**“That under section 21(b) of the Consumer Protection Act this Court may call for the records and proceedings in appeal no. A/1187/2016 decided on 31.05.2019 by the State Consumer Disputes Redressal Commission, U.P., at Lucknow, and that of the Consumer Complaint 18 of 2012, later numbered as 229 / 2014, decided on 28.04.2016, by the District Consumer Forum, Mathura, UP.;**

**That the order and judgement dated 31.05.2019 passed by the State Consumer Disputes Redressal Commission, U.P., at Lucknow be quashed;**

**That the order and judgement dated 28.04.2016 passed by District Consumer Forum, Mathura, U.P., may be restored;**

**That the Petitioners may be granted cost of the present petition and/or any other relief which this Hon'ble Commission deem fit in the facts and circumstances of the present case.”**

8. The learned counsel for the Complainant argued that the State Commission failed to take note that the payments made by OP-2 were executed using bearer cheques rather than account payee cheques. Additionally, the name on the cheques, Neelam w/o Amit Kumar was incorrect, and receipts were issued in the name of Neelam w/o BM Sharma. He maintained that the complainant did not provide any authority, permission or direction to OP-2 to make payments in her name by any mode or means. Further, there was no application, request or any other documentary evidence from her demanding any loan from OP-2. He further argued that the State Commission erred in overlooking the fact that only two bags of potatoes were returned to the complainant, and therefore, there was no justification for deducting the rent for 3389 bags of potatoes from the amount decreed by the District Court, as potatoes were never returned to her. Consequently, there was no basis for any rent to be charged to the complainant. He contended that State Commission also failed to recognize that the entire

harvest of the farming family was appropriated by OPs through unfair trade practices and defective service. As a result, there was no reason to set aside the cost of Rs.50,000/- awarded for mental agony and litigation charges. He further argued that State Commission did not adequately consider the District Forum's finding that the OPs failed to produce a single piece of evidence to support their contentions. Therefore, he prayed for the District Forum's order to be restored.

9. The learned Counsel for OP-2 reiterated the arguments previously presented before both lower fora and denied any unfair practice on his part. He vehemently argued that the Complaint case was barred under Section 24 of the Uttar Pradesh Regulation of Cold Storage Act, 1976, wherein as per the Act, District Horticulture Officer is the competent Authority to adjudicate such matters of cold storage. He relied on the judgment of Allahabad High court in M/s. Behari Colds (P) Ltd. vs. State Consumer Disputes Redressal Commission, Lucknow and others, (WP No.557 (MS) of 2009), decided on 21.8.2010 and General Manager, Telecom vs M Krishnan & Anr (2009(8)SCC 481) dated 01.09.2009; and argued that said Act being a special law would override the provisions of the Consumer Protection Act and hence, this Commission does not have the jurisdiction to entertain the present complaint. The present revision petition is barred by limitation and further the complainant was not a consumer and referred to the legal notice dated 25.10.2011. He asserted that the cold storage of OP-2 was situated in Sadabad which is under the jurisdiction of District Mahamaya Nagar and not Mathura where the complaint was filed. OP-1 brought the bags of potatoes to him stating that they belonged to his family and obtained some receipts in the name of Neelam w/o Amit and some in the name of Neelam w/o BM Sharma. OP-1 was the complainant's servant/agent. On several occasions and under different names as discussed above kept taking money from OP-2. He argued that a total of Rs.5,90,227 was due against the complainant when she came to withdraw her potato bags and it is to evade this liability that she made a false story against OP-2. To support his claim, he referred to reply of the banker in letters dated 14.03.2011 and 04.11.201. The State Commission erred in proceeding against him ex parte without deciding the maintainability issue of the complaint. The complainant had never approached OP-2 and all communication regarding the potato bags and even the transaction of their delivery was done between OP-1 and OP-2 only. He submitted that with respect to the payments made by him via cheques, the same were certified by the bank which clarified that the same were realised in the name of Neelam, the complainant, from the counter of the bank. He appreciated the Order of State Commission, Lucknow and prayed for the same to be upheld.

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties. The main issues to be determined are whether the complainant is a consumer under Act? Whether the application of UP Regulation of Cold Storage Act, 1976 bars the jurisdiction of Consumer Protection Act? And whether the dispute in question is triable under the Consumer protection Law?

11. It is the contention of the OPs that since the dispute pertaining to UP Cold Storage Act the case was not maintainable under Consumer law. However, Section 3 of the Consumer Protection Act enunciates that the provisions of this Act are in addition to and not in

derogation of any other law for the time being in force. Therefore, it cannot be said that because of the provisions of the Cold Storage Act, this case was not maintainable under the consumer law. As regards the issue whether jurisdiction of Consumer Fora can be invoked when special remedies are provided under any State or Central Acts, has been extensively addressed by the Hon'ble Supreme Court in **Trans Mediterranean Airways vs. Universal Exports & Anr**, (2011) 10 SCC 316 wherein it was held that the Consumer Protection Act is designed to protect consumer interests and provide speedy mechanism to resolve disputes related to defective goods or deficiency of services. Section-3 of the Act explicitly states that its provisions are in addition to and not in derogation of any other law, meaning the remedies available under the Act are supplementary to those provided under other statutes. The Act provides for an alternative system and offers an additional remedy to address deficiencies in service, without negating other legal remedies. Therefore, the contentions of OPs in this regard are untenable.

12. In the present case, the complainant is a farmer who alleged to have stored 3389 bags of potatoes in the cold storage facility of OP-2 and there was a dispute. The contention of OPs is that the act of storing potatoes constitutes a "commercial purpose," which would exclude the complainant from the definition of a consumer under Section 2(1)(d) of the Consumer Protection Act. According to the definition, a consumer is someone who buys goods or avails services for personal use and not for resale or commercial purposes. The Hon'ble Supreme Court in **National Seeds Corporation Limited vs. M. Madhusudhan Reddy & Anr** (2012) 2 SCC 506, held that farmers who produce seeds for the purpose of earning their livelihood through self-employment do not engage in commercial activities. Explanation to Section 2(1)(d) specifies that "commercial purpose" do not include the use of goods or services by a consumer exclusively for earning a livelihood through self-employment. This storage was also necessary for ensuring viability of the produce until it could be sold or used, a common practice among farmers. The activities aimed at personal sustenance and livelihood fall within the ambit of consumer protection. Therefore, the Consumer Fora have the jurisdiction to entertain the present complaint.

13. Notwithstanding the above, the main dispute in question entails transaction of Rs.3,59,775 between the complainant and the OPs. As per the allegations of the complainant, the aforesaid amount in the form of cheques was fraudulently withdrawn the by wife of OP-1 namely Mrs.Savita, by making the signatures of the complainant. Therefore, the matter entails allegation of cheating and forgery. The learned State Commission considered that it is difficult and rather impossible to adjudicate the matters entailing allegations of fraud, forgery and cheating in financial transactions by summary proceedings under the Consumer Protection Act. The learned State Commission also considered that the matters entailing allegations of fraud, forgery and cheating in financial transactions in the payment of Rs. 3,59,775 between the complainant and the OPs can be more appropriately decided only by a competent civil court.

14. The learned State Commission, therefore, directed to deduct the disputed amount of Rs. 3,59,775 and cold storage rent of Rs.2,30,452 totalling Rs.5,90,227 from the price of potatoes viz. Rs.7,48,969 stored and balance amount of Rs.1,58,742 be paid to the

complainant and that the complainant is entitled to recover the disputed amount of Rs.3,59,775 by civil proceedings.

15. In view of the foregoing discussions, I find no reason to interfere with the order of the learned State Commission dated 31.05.2019 and the Revision Petition No. 1959 of 2019 is dismissed.

16. There shall be no order as to costs. All pending applications stand disposed of accordingly.

.....  
**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**