

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON: 31.12.2024
PRONOUNCED ON: 02.05.2025**

FIRST APPEAL NO. 1167 OF 2014

(Against the Order dated 19/08/2014 in Complaint No. 58/2010 of the
State Commission Lucknow, UP)

WITH

IA/7845/2014 (Condonation of delay) IA/7846/2014(For Ex- Party Stay) &
IA/7847/2014 (For Exemption)

The New India Assurance Co. Ltd.,
A Company incorporated under
The Companies Act, having it's
Registered Office at 87, M.G.
Road, Fort, Mumbai and Regional
Office I at R.G.City Centre, II floor
L.S.C. Block B, Lawrence Road,
Delhi 110035.

... Appellant/Complainant

Versus

M/s Abhishek Cold Storage Pvt Ltd.
Parshadepur Road, Raibareli,(U.P.)
Through Managing Director.

.... Respondent/OP

BEFORE:

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

For the Appellant : Mr. Salil Paul, Advocate
For the Respondent: Mr. Nikhil Jain, Advocate

JUDGMENT

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

1. The Appellant filed the instant Appeal under section 15 of the Consumer Protection Act, 1986 ("the Act"), against the Order dated 19.08.2014 passed by the learned State Consumer Disputes Redressal Commission, Lucknow ("State Commission") in CC No. 58 of 2010, wherein the State Commission partly allowed the Complaint.

2. As per report of the Registry, there is a delay of 38 days in filing the present Appeal. For the reasons stated in IA/1167/2014, the delay is condoned. For convenience, the parties in the present matter are being referred to as per position held in the Consumer Complaint.

3. Brief facts of the case, as per the complainant, are that they placed their consignments of 60,543 bags and 41,880 bags of potatoes were placed in cold storage and insured by New India Assurance Company Ltd., located at Jail Road, Raibareli. The insurance coverage was for Rs.90,00,000 vide Policy No. 422002/44/08/51/ 30000008, which remained valid from 15.04.2008, to 14.11.2008. The policy premium of Rs.50,400 was duly paid in full. Prior to issuing the insurance policy, authorized personnel from the insurance company conducted a thorough pre-inspection and proper survey of the cold storage facility. Following this comprehensive assessment and upon

complete satisfaction with the facility's conditions, the insurance company proceeded to issue the policy. On 10.09.2008, a short circuit was detected in Chamber II of the Cold Storage facility, necessitating the opening of the chamber door to eliminate the accumulated foul odor and allow fresh air circulation. The power supply in District Raibareli is known for significant deficiencies, frequently experiencing interruptions due to tripping that typically persist for extended periods. This pattern of power irregularity continued all along September 2008, prompting formal written complaints to Uttar Pradesh Power Corporation Ltd (UPPCL) on 12.09.2008, 17.09.2008, 18.09.2008 and on 22.09.2008 the operations were significantly compromised due to complete electricity failure. On 19.09.2008, their Kirloskar generator experienced a breakdown caused by water pump failure. On the same evening, a severe storm struck the area, resulting in extended power outage persisted until 22.09.2008. Due to this, the temperature in Chamber II of the cold storage facility could not be properly maintained, resulting in the deterioration of 31,609 bags of potatoes valued at Rs.27,81,592. They promptly filed a claim with the insurer and provided all documents. While a survey was conducted, the claim was rejected by OP-2 vide letter dated 27.05.2009, without specifying any reason. After multiple letters to insurer requesting clarifications, the OP finally disclosed reasons vide letter dated 19.06.2009 and the complaint was filed.

4. In its reply, the OP insurer contended that as per Surveyor Report dated 29.01.2009, the Cold Storage's Logbook contains no information regarding the nature of short-circuit, specifically whether it was major or minor in character. There were no visible signs of short circuit as alleged by the insured. If any short circuit had indeed occurred, the repair or replacement would require only half an hour, or one hour, which would be insufficient time to cause deterioration to the extent claimed. Following a comprehensive view of both Cold Storage records and power Sub-Station Jijaulia records, Surveyor Sri Sanjay Khare reported that between 08.09.2008, and 17.09.2008, the power supply state was normal, ranging from a minimum of 9 hours per day to a maximum of 12 hours per day. Significant discrepancies between Cold Storage Logbook and Sub-Station Records. Specifically, the Surveyor noted that on 19.09.2008, electricity was supplied for 5.30 hours; on 21.09.2008, power was restored for 2.50 hours; and on 22.09.2008, there was 12 hours of electricity supply, followed by regular daily supply of 12-13 hours. However, the Cold Storage Logbook contradictorily indicated no power supply whatsoever on 21.09.2008, and only 1.45 hours of supply on 22.09.2008. These inconsistencies undermined their assertions of extent of power failure, thereby calling into question the good faith that serves as the foundation of the indemnity. Consequently, it is maintained that the complainant is not entitled to the relief sought.

5. The Survey Report dated 29.01.2009, following a thorough site inspection and comprehensive review of records, concluded that the alleged damage was not attributable to any machinery accident. Rather, Reports dated 27.01.2009, and 29.01.2009, revealed that the loss resulted from multiple deficiencies in storage practices. Firstly, improper storage of potatoes was identified, as there was no clear space between adjacent rows in any racks or floors within the chamber. Additionally, potatoes were stored directly against side walls without appropriate spacing, and in the topmost floor where bunker coils were installed, potatoes were positioned throughout the entire floor area, making direct contact with both side walls and bunker coils. This arrangement significantly restricted air circulation throughout the floors and chamber, causing temperature elevation. Secondly, the potatoes were stored substantially beyond capacity in both chambers of the Cold Storage. While the total approved capacity was 95,000 bags (47,500 quintals), the Stock Book indicated actual storage of 102,424 bags (51,211.50 quintals). The storage capacity is so critical that warranty number 14 of the insurance policy provides detailed specifications for capacity determination. The Survey Report identified negligence by the insured in implementing timely measures to maintain appropriate temperature and promptly repair damaged machinery. Although the short circuit reportedly occurred at 4:30 AM on 10.09.2008, the

generator was not activated until 8:00 p.m., about 11.5 hours later. Further, while the 160 KVA D.G. set breakdown allegedly occurred on 19.09.2008, the complaint to repairer M/S Cummins could not have been lodged before 23.09.2008, as evidenced by service report dated 24.09.2008, which notably contained no complaint receipt date. The Survey Report dated 29.01.2009, further determined that potato deterioration was not caused by inadequate electricity supply, as there was sufficient power supply of at least 9 hours daily to maintain temperature from 08.09.2008 to 24.09.2008, with only three exceptional days for 5.30 hours on 19.09.2008 and 2.50 hours on 21.09.2008, and no supply on 20.09.2008. However, Chamber No. 2 temperature began rising approximately 10 days before these disruptions, specifically from 09.09.2009. This evidence contradicts the insured's claim that the loss resulted from erratic power supply or machinery failure, instead of attributing it to improper storage practices, excess storage beyond capacity, and multiple instances of negligence by the insured. It was clear that the insurance claim submitted by the insured was repudiated vide letter dated 27.05.2009, in strict accordance with the factual circumstances and in compliance with terms and conditions stipulated in the insurance policy. Subsequently, upon the insured's request, a letter dated 19.06.2009, was issued providing comprehensive details regarding the reasons for claim repudiation. Regarding the conformity

of the claim repudiation with the policy terms and conditions, it is important to note that the policy explicitly stipulates coverage for damage to goods resulting exclusively from accidents to refrigeration machinery that cause temperature elevation in refrigeration chambers. However, the Survey Report dated 29.01.2009, conclusively brought put the damage to the potatoes did not originate from any accident affecting the refrigeration machinery, but rather stemmed from three primary causes: improper storage practices, excessive storage exceeding the facility's total capacity, and negligence by insured in implementing timely measures to maintain temperature within prescribed parameters and prompt repair malfunctioning machinery.

6. The learned State Commission vide order dated 19.08.2014 dismissed the complaint with the following observations:

ORDER

The present complaint is partly allowed against the respondent Insurance company. The Respondents are directed to pay Rs. 27,77,483/- (rupees twenty seven lakhs seventy seven thousand, four hundred eighty three only) on account of the loss suffered due to potato spoiling and Rs.50,0000/- (rupees fifty thousand) on account of Mental and physical agony within two months . If the payment is not made within the above said period, then the complainant will be entitled to get interest at the rate of 12 percent per annum from the date of filing of complainant till the date of its realisation. The complainant will get Rs.10,000.00 separately from the respondent on account of cost of this complaint.

7. Being aggrieved by the impugned order dated 19.08.2014 passed by the Ld. State Commission, Opposite party (Respondent herein) filed this present Appeal no. 1167 of 2014 praying:

A. The appellant most respectfully prays that this commission maybe pleased to set aside the order dated 19th August 2014, passed by U.P State Commission, in CC No. 58/2010

B It is also prayed that this commission maybe pleased to award the costs of this appeal and also pass such other and further orders as maybe deemed just and proper in the circumstances and on the facts of the case.”

C. And for this Act of kindness the Appellant shall ever pray.

8. In the grounds of the instant appeal, the Appellant has mainly contended the following:

A. The State Commission misdirected itself in holding that the cover note itself was issued after date of loss and hence the policy terms and conditions were not binding on the complainant. Such conclusion is contrary to the record. If the cover note was actually issued after date of loss it is a case of fraud and violation of S.64 VB of Insurance Act, rendering the contract null and void ab initio. Holding complainant not bound by the terms and conditions of the policy if they were not supplied, was not even their case. In any case, Cold Storages are specialized business requiring specialized knowledge and the terms & conditions are available on the internet.

B. State Commission erred in upholding both Preliminary and Final Surveyor's reports dated 27.1.2009 and 29.1.2009, and gave no

credence to the reports of IRDA, disregarding precedent of this Commission and Apex Court on the importance of Survey reports.

C. State Commission erred in holding that the survey reports were delayed after inspection, whereas the reports were pending due to complainant's failure to submit documents to substantiate his claim and ultimately the reports were filed based on available records.

D. State Commission misdirected itself in holding that OP took 4 months to repudiate the claim, when even most basic document i.e. the claim form, was received by the Surveyor on 20.03.2009.

E. State Commission erred in holding that OP did not give a chance to clarify and just repudiated the claim, when it was clear from Survey reports that despite repeated requests they refused to clarify and made complainant position amply clear. In fact, no explanation was offered for grave discrepancies in the log books and Public record at any stage. While no claim is liable under Machinery Breakdown Policy, the claim under the Deterioration of Stocks Policy was not payable.

F. State Commission totally misdirected itself in holding that erratic power supply is accidental and cannot be said to be deliberate on the part of Electricity Supply Station when failure of electricity per se is not covered under Deterioration of Stocks insurance and while the complainant failed to substantiate cause of loss and also

manipulated the log books. In the event Failure of Electricity Supply add on cover is opted for, the cover comes into vogue only when supply from the Sub-station is interrupted due to operation of an insured peril, which is not the case from 10.9.2008 to 22.9.2008.

G. State Commission erred in failing to hold that complainant failed to substantiate the claim and quantum of loss by independent evidence especially in view of detailed Surveyor's report regarding contradictions with respect to authenticity of log books maintained.

H. State Commission erred in creating a contract not intended by the parties by holding OP guilty of deficiency in service based on presumptions and assumptions when the contract was clear.

I. The State Commission erred noting that, as per complainant's own admission, notification of the loss was submitted significantly after the occurrence of the incident. This critical delay constitutes a violation of policy conditions that would disqualify the claim. It was their own negligence which caused loss and not an insured peril and approbating and reprobating the Surveyor report was allowed.

J. State Commission erred granting Rs.27,77,483 the gross loss quantified, without deducting the excess, under-insurance and 10% of the sum insured for rottage and shrinkage as per policy terms, bringing net amount quantified the Surveyor to Rs.12,62,851.

9. The learned counsel for the Appellant/OP reiterated the contentions in the written version and grounds of Appeal and argued that the complainant secured a Deterioration of Stock Insurance Policy as well as a Machinery Breakdown Insurance Policy. As per complainant, the damage to potato stocks in the insured Cold Storage was detected on 25.09.2008, with the claim bill dated 23.10.2008. Upon receiving notification of damage and loss on 29.09.2008 to potato stocks, under the Deterioration of Stock Insurance Policy issued by the OP, the OP appointed AK Jaiswal as Surveyor and Loss Assessor to conduct the preliminary survey. In his report dated 27.01.2009, the surveyor presented that as per Stock Book, the chambers were overloaded. There was failure to maintain proper records showing unloading activities since last week of July 2008. The logbook was not presented to the preliminary surveyor. The loss was due to improper storage, insufficient air circulation, non-uniform temperature distribution and subsequent temperature rise caused by electrical failure. Subsequently, Sanjay Khare was appointed by OP as Final Surveyor, who submitted his report dated 29.01.2009. This report calculated the gross loss at Rs.27,77,483, subject to Under Insurance and Average Clause provisions. In the conclusion and inspection remarks section, the insured's lapses and claim discrepancies were detailed. Sanjay Khare later reaffirmed these calculations in a letter dated 29.10.2014. Based on both the survey reports (Preliminary and Final), the OP repudiated the

claim vide letter dated 27.05.2009 and providing further reasons vide subsequent letters dated 19.06.2009 and 30.09.2009. The learned counsel argued that OP submitted detailed evidence before the State Commission, including Affidavits from Deputy Manager of OP, Mr Sanjay Khare and Mr Akshay, who conducted the preliminary survey. He asserted that the claim is entirely non-payable due to clear breaches of the terms and conditions of the policy for Deterioration of Stock. The survey reports comprehensively document the lapses, negligence, and failures of the complainant, constituting violations of policy terms and conditions. He asserted that under these established circumstances, the OP is not liable for any payment. He asserted that, without prejudice to the specific objections made and established, should this Commission determine that the complainant's claim is payable, then as per terms and conditions of the policy for Deterioration of Stock, the OP's liability would be limited to Rs. 12,62,851, as brought out in the Survey report.

10. On the other hand, the learned counsel for the complainant reiterated the facts in the complaint and argued that the OP has illegally and in bad faith repudiated the claim of the complainant vide their letters dated 27.05.2009 and 19.06.2009. The complainant stored 60,453 bags and 41,880 bags of potatoes in the cold storage facility, insured by OP for Rs.90,00,000 vide Policy No. 422002/44/08/51/3000008. The policy was valid from 15.04.2008 to 14.11.2008. The complainant paid the

premium amount of Rs. 50,400 and the insurance policy was issued only after a thorough pre-inspection and proper survey of the cold storage facility by an authorized representative of the OP. The facility was meticulously inspected and surveyed by a competent person, and the policy was issued only after the company was fully satisfied with the condition of the facility. He argued that on 10.09.2008, a short circuit was detected in Chamber II of the cold storage facility. As a precautionary measure, the door was opened to eliminate the bad odour and allow fresh air to circulate within the chamber. He further argued that the general power supply state in District Raibareli is notably deficient and frequently interrupted due to tripping, which typically persists for extended periods. Such interruptions occurred in September 2008, prompting written complaints to UPPCL on 12.09.2008, 18.09.2008, and 22.09.2008. Further, from 17.09.2008 to 18.09.2008, the electric supply was severely compromised due to electrical failures. On 19.09.2008, the complainant's Kirloskar make generator malfunctioned due to a water pump failure, and that same evening, a significant storm caused an electrical outage that continued until 22.09.2008. As a consequence of these, the temperature in Chamber II of the cold storage facility could not be maintained at the required level, resulting in the spoilage of potatoes stored. The loss suffered by the complainant for 31,609 bags of potatoes valued at Rs.27,81,592. The complainant duly filed a claim with the OP

on the prescribed form and provided all relevant documentation. He asserted that, despite providing all possible details and clarifications, the OP repudiated the claim and the complainant was given no inputs or reasons for loss. The terms itself were provided much later. While the surveyor's report dated 29.01.2009 was not made available to the complainant, the facts revealed in the Written Version by OP indicated that the surveyor had assessed the gross loss at Rs. 27,77,483 in said report. The complainant had filed a claim for Rs. 27,81,592, which is substantially consistent with the loss assessed by the surveyor. He argued that a survey was again conducted and after which, the claim was rejected by OP-2 vide letter dated 27.05.2009, without providing any justification for such rejection. Following the rejection, the complainant sent multiple communications, requesting clarification on the grounds for rejection. Specifically, letters dated 08.06.2009 and 16.06.2009. It was only after a considerable delay that the OP finally disclosed their reasoning through their letter dated 19.09.2009. He argued that the complainant made every reasonable effort to salvage the stored produce. Through diligent measures, all potatoes stored in Chamber No.1 were successfully preserved, and 10,271 bags in Chamber No.2 were rescued and subsequently returned to the farmers. He asserted that the justifications provided in letter dated 19.06.2009 are demonstrably false and without merit. He reiterated that the allegations

that the chamber was not overloaded in any respect, the quantity of bags remained same as documented during the pre-inspection survey, adequate clearance existed between the ceiling and bunker coil ensuring proper air circulation throughout the facility, the deterioration of potatoes resulted directly from electrical failures rather than any impediment to air circulation, the maintenance of log books bears no causal connection to the deterioration of stored potatoes, all relevant operational records of the cold storage facility were properly maintained as required, immediately following the power failure, windows in both chambers were promptly opened to facilitate fresh air circulation, which directly contributed to the successful preservation of approximately 10,271 bags. He sought the Appeal be dismissed with costs.

11. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

12. It is an admitted position that an Insurance Policy - Deterioration of stocks (potatoes) vide Policy No..42200/44/08/30000008 was issued by OP to the complainant for cover of Rs. 90,00,000. This policy was valid from 15.04.2008 to 14.11.2008. With the incident involving short circuit and electrical breakdown occurring between 10.09.2008 and 22.09.2008 the complainant claimed damage. There are inconsistencies

corresponding records of the state electricity board. Evidently, the Insurance cover document filed in the record was issued by the OP on 24.10.2008, which postdates the incident in question. Prior to the date of the incident, the Insurance cover had not been provided to the complainant. There is no plausible explanation as to why the complete contract details were not provided, notwithstanding the acceptance of complete premium and insurance liability. This by itself constitutes deficiency in service rendered by OP, as it exposed the policyholder to uncertainty with respect to the risk cover. The stand taken by OP that these terms are otherwise available on the Internet is wholly untenable. Under these circumstances, there is also no reasonable justification for the subsequent delivery of additional insurance terms to the complainant, as the primary coverage document itself was not furnished until after the incident had already happened. The policy, claim, detailed survey reports and connected records reveal the following:

A. The Gross Loss determined is	Rs,27,77,483.
B. After Under Insurance factor is	Rs.24,40,599.
C. Shrinkage adjustment liability is	Rs. 4,50,000.
D. Rottage adjustment liability is	Rs. 4,50,000
E. Policy Excess liability	Rs. 2,77,748

Determined Net liability of the OP **Rs.12,62,851**

13. While there was deficiency in service with respect to the supply of policy terms, at the same time, we consider that the parties are liable to adhere to the fundamental terms of contract which were agreed upon at the time of preferring the proposal and payment of premium. Merely because of delay in supply of the document, the entire contract itself is not rendered void. Admittedly, the complainant is asserting the claim under the same policy. Therefore, we consider it appropriate to determine the loss as per fundamental policy terms which both the parties need to adhere. In view of the foregoing, based on the aforesaid deliberations, we are of the considered view that the Order of the State Commission dated 19.08.2014 deserves to be modified only to the extent of determining the liability of insurance claim in terms of policy as **Rs.12,62,851**. The remaining part of the order of the learned State Commission dated 19.08.2014 remains unaffected.

14. The First Appeal No. 1167 of 2014 is, therefore, disposed of with above directions.

15. The OP is directed to pay Rs.50,000 as costs to the complainant.

16. All pending Applications, if any, stand disposed of accordingly.

.....
(SUBHASH CHANDRA)
PRESIDING MEMBER

.....
(AVM J. RAJENDRA AVSM VSM (Retd.)
MEMBER