

ORIENTAL INSURANCE CO. LTD.

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v.

NATIONAL BULK HANDLING CORPORATION PVT. LTD.

(Civil Appeal No. 10409 of 2016)

FEBRUARY 12, 2020

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**[MOHAN M. SHANTANAGOUNDAR AND
R. SUBHASH REDDY, JJ.]**

Insurance – Fidelity Insurance – Respondent is a Collateral Management Company which stores commodities pledged by farmers, traders etc., in availing loan from lending banks and other institutions – In case of any loss of the pledged commodities, respondent is liable to make good the loss to the lending bank – Respondent took Fidelity Guarantee Insurance Policy from appellant-insurance company in respect of the pledged commodities stored in godowns – Three firms entered into agreements with respondent for storing commodities including urad and mentha oil – Urad unauthorisedly removed from the godown – Respondent took steps to prevent possible loss to oil – 601 barrels of oil were shifted to another godown – On quality check, it was revealed that mentha oil was substituted by water in the barrels – Claim lodged by respondent with appellant – Not accepted – National Commission allowed claim towards loss of mentha oil but rejected the claim so far as urad was concerned – Held: Fidelity Guarantee is different from contingency guarantee – Protection afforded is different than in normal insurance policies – It is a contract whereby, for a consideration, one agrees to indemnify another, against loss, arising from the breach of honesty, integrity or fidelity of an employee or other person holding a position of trust – Impugned order is assailed mainly on the ground that the respondent failed to prove involvement of any of its employees, as such there cannot be any liability on appellant – Survey report itself indicates involvement of respondent's employees in removing 601 barrels of mentha oil stored by the respondent – It has a specific observation that respondent's security guard allowed owner to lift the stock – In the complaint filed by respondent specific allegation is made about involvement of its staff – There is a clear involvement of respondent's employees and other

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- A *contract employees in substituting the mentha oil barrels with water – No reason to interfere with the impugned order.*

Dismissing the appeal, the Court

HELD: 1.1 Fidelity Guarantee is different from contingency

- B **guarantee. The insurance under it, is for honesty, against negligence or for being faithful and loyal to its employees. The protection afforded is different than in normal insurance policies. It is a contract whereby, for a consideration, one agrees to indemnify another, against loss, arising from the breach of honesty, integrity or fidelity of an employee or other person holding a position of trust. The insurance policy of fidelity guarantee is to be construed as a policy, intended to protect the assured against the contingency of a breach of fidelity on the part of a person in whom confidence has been placed. The impugned order is assailed mainly on the ground that the respondent has failed to prove involvement of any of the employees of the respondent-Company, as such, there cannot be any liability on the appellant-insurance company. The pledged goods of 601 barrels of mentha oil was stored in the warehouse. The survey report dated 26.03.2009, itself indicates the involvement of employees of the respondent-Company in removing 601 barrels of mentha oil stored by the**
- C **respondent-Company. In the complaint filed, specific allegation is made about involvement of staff of the respondent-Company.**
- D **[Paras 9, 10][762 E-F; 762-H; 763 A-D]**

1.2 There is a specific observation in the survey report that the security guard of the respondent-Company had allowed

- F **owner to lift the stock. There is a clear involvement of the employees of respondent and other contract employees in substituting the mentha oil barrels with water. Further, it cannot be said that there is any delay on the part of the respondent in lodging the claim, so as to accept that there is breach of condition no. 1 of the policy. [Paras 11, 13 and 14][763 C-D; 763 E-F;**
- G **764 B-C]**

Food Corporation of India v. New India Assurance Co.

Ltd. & Ors. (1994) 3 SCC 324 : [1994] 1 SCR 939;

Gurshinder Singh v. Shriram General Insurance Co.

Ltd. & Anr. (2020) 2 SCALE 473 – referred to.

- H *Black's Law Dictionary – referred to.*

<u>Case Law Reference</u>	A
[1994] 1 SCR 939 referred to Para 7	
(2020) 2 SCALE 473 referred to Para 7	
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10409 of 2016.	B
From the Judgment and Order dated 22.06.2016 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint No. 2 of 2010.	
Vishnu Mehra, Anant N. Mehrotra, Ms. Sakshi Mittal, Advs. for the Appellant.	C
C.U. Singh, Sr. Adv., Parag Kandhar, Ms. Iti Agarwal, Chandra Prakash, Advs. for the Respondent.	
The Judgment of the Court was delivered by	
R. SUBHASH REDDY, J.	D
1. This civil appeal is filed under Section 23 of the Consumer Protection Act, 1986, by the opposite party, in Consumer Case No. 2 of 2010, filed before the National Consumer Disputes Redressal Commission, New Delhi, aggrieved by the judgment and order dated 22.06.2016. The above said complaint is disposed of by impugned order, directing the appellant-opposite party to pay a sum of Rs. 3,46,87,113/- (Rupees Three Crores Forty Six Lakhs Eighty Seven Thousand One Hundred and Thirteen) to the respondent-complainant as per the insurance policy with interest @ 9% per annum with effect from six months from the date of lodgement of the claim, till the date of payment.	E
2. The respondent-complainant is a Collateral Management Company, which undertakes to store the commodities pledged by the farmers, traders and manufacturers etc., in availing loan from lending banks and other institutions. In case of any loss of the pledged commodities, the respondent-complainant is liable to make good the loss to the lending bank. The respondent-Collateral Management Company, took Fidelity Guarantee Insurance Policy from the appellant-opposite party, in respect of the pledged commodities stored in warehouses/ godowns at several places.	F
3. The three firms namely S.K. Sales Corporation, Navbharat Commodities and Navbharat Agro Products, entered into agreements	G
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- A with the respondent-complainant for storing commodities including urad and mentha oil in their warehouse at Gadarpur in District Udhampur Singh Nagar, Uttarakhand. The respondent-Company was appointed as the Collateral Manager for the said commodities, which has deployed security guards hired by it from the security agency, besides its own field staff.
- B Coming to know that on 06.11.2008, the stored commodity of urad was unauthorizedly removed from the godown, which was pledged to HDFC Bank, the respondent dispatched a team of its officers to investigate the same. The report dated 16.11.2008 of the investigating agency revealed certain omissions and commissions by the concerned employees of the respondent in connivance with the borrowers. Coming to know of such unauthorized removal of urad, the respondent has taken steps to prevent further possible loss to oil and wheat. 601 barrels of oil were shifted to a godown at Bazpur, where a quality check was conducted. On making such quality check, laboratory report revealed that the mentha oil was substituted by water in the barrels. Thereupon, claim was lodged by the respondent with the appellant on 08.11.2008 and further a complaint was also lodged at the Police Station upon which, an FIR was registered on 19.11.2008.
- 4. The respondent-complainant made a claim with appellant, alleging that the commodities were removed/substituted in connivance with the employees which was an act of infidelity covered by the insurance policy taken by it. It is alleged that the employees have committed criminal breach of trust, with a view to cause loss to the banks and the complainant. When the claim was not accepted, the respondent-complainant approached the National Commission, claiming an amount of Rs. 4,17,84,213/- (Rupees Four Crores Seventeen Lakhs Eighty Four Thousand Two Hundred and Thirteen). The said claim included loss of stock of urad payable to HDFC Bank for an amount of Rs. 70,97,100/- (Rupees Seventy Lakhs Ninety Seven Thousand One Hundred) and further loss of Rs. 3,46,87,113/- (Rupees Three Crores Forty Six Lakhs Eighty Seven Thousand One Hundred and Thirteen Only) payable to State Bank of India for the stock commodity of mentha oil. The said claim was contested and opposed by the appellant- opposite party. By considering the submissions on both sides and other relevant material placed on record, the National Commission, by impugned order, allowed the claim of Rs. 3,46,87,113/- along with interest @ 9% per annum towards the loss of mentha oil but at the same time rejected the claim so far as urad is concerned.

5. We have heard Sri. Vishnu Mehra, learned counsel appearing for the appellant-Company and Sri. C.U. Singh, learned senior counsel appearing for the respondent-complainant. Learned counsel for the appellant, by taking us to the material placed on record and the impugned order, mainly contended that the respondent-complainant has failed to prove that any employee is involved in removing/substituting mentha oil with water in 601 barrels, which was stored in the godown. It is submitted that even as per the investigation reports, seals were intact, as such, in absence of any finding with regard to tampering of seals, there is no basis for the claim of the respondent-complainant. Further it is stated that as per the terms of the contract of insurance, the claim was not made immediately. As such, respondent has violated the terms and conditions of the contract of insurance. It is submitted that National Commission fell in error in allowing the claim of Rs. 3,46,87,113/- towards the loss of mentha oil, as claimed by the respondent- complainant. It is further submitted that even in the impugned order, the National Commission did not name any employee of the respondent, who was allegedly involved in substituting the mentha oil with water. Thus, it is submitted that the impugned order is fit to be set aside, by allowing the appeal.

6. On the other hand, Sri. C.U. Singh, learned senior counsel, by referring to the survey report of the appellant-Company and other material, has submitted that even as per the survey report of the appellant- Company, the commodity of mentha oil was removed, by substituting with water, by the borrowers, in connivance with employees. Further, it is submitted that on the complaint made by the respondent, the owners of the commodity who have pledged the goods to the bank and also the employees of the respondent, were charge-sheeted for offences under Sections 420, 406, 405, 415, 427 of the Indian Penal Code and the case is pending trial. It is submitted that the survey report itself indicates involvement of the employees of the respondent, as such, claim is covered by the insurance policy. It is submitted that after filing of the complaint, when the claim is repudiated, such rejection order also is questioned by way of amendment. It is submitted that when the impugned order is read in entirety with regard to urad and mentha oil, it is clear that the warehouse Supervisor Mr. Narender Yadav and security guard Mr. Ram Singh were involved in removal/substitution of mentha oil with water.

7. Learned counsel by taking us to the survey report, has also submitted that the survey report itself indicates for prosecuting borrowers

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- A as well as employees of the respondent, as such, there is no basis for the allegation of the appellant that employees were not involved. It is submitted that when it has come to light that mentha oil was substituted by water, 100 per cent sampling was undertaken, which was completed on 12.11.2008 and the investigation report was submitted to the respondent-complainant on 14.11.2008 and the matter was reported to the insurer on 18.11.2008, as such, there is no violation of condition no.1 of the policy. Learned counsel, explaining the scope of Fidelity Guarantee Insurance Policy, has placed reliance on a judgment of this Court, in the case of ***Food Corporation of India Vs. New India Assurance Co. Ltd. and Others***¹ and a recent judgment of this Court dated 24.01.2020,
- B in the case of ***Gurshinder Singh Vs. Shriram General Insurance Co. Ltd. & Anr.***²

- 8. Upon hearing the learned counsels on both sides and on perusal of the impugned order and other material placed on record, we do not find any merit in any of the contentions advanced by learned counsel for
- D the appellant. The aforesaid judgments relied on by learned counsel for the respondent, though relate to insurance claims, but the issues decided in the aforesaid judgments, have no direct bearing on the issues which arise for consideration in this case.

- 9. It is not in dispute that the insurance policy for fidelity guarantee
- E was in force during the relevant time, which was obtained by the respondent-complainant. Fidelity Guarantee is different from contingency guarantee. The insurance under it, is for honesty, against negligence or for being faithful and loyal to its employees. The protection afforded is different than in normal insurance policies. Precisely, it is a contract whereby, for a consideration, one agrees to indemnify another, against loss, arising from the breach of honesty, integrity or fidelity of an employee or other person holding a position of trust. In *Black's Law Dictionary*, fidelity insurance is explained as under:
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- G “Fidelity Insurance- Form of insurance in which the insurer undertakes to guarantee the fidelity of an officer, agent or employee of the assured or rather to indemnify the latter for losses caused by dishonesty or a want of fidelity on the part of such person.” As such, the insurance policy of fidelity guarantee is to be construed as a policy, intended to protect the assured against the

H ¹ (1994) 3 SCC 324

² C.A. No. 653 of 2020

contingency of a breach of fidelity on the part of a person in A
whom confidence has been placed.

10. The impugned order is assailed mainly on the ground that the respondent has failed to prove involvement of any of the employees of the respondent-Company, as such, there cannot be any liability on the appellant-insurance company. It is not in dispute that the pledged goods of 601 barrels of mentha oil was stored in the warehouse. The survey report dated 26.03.2009, itself indicates the involvement of employees of the respondent-Company in removing 601 barrels of mentha oil stored by the respondent-Company. Immediately, after confirmation and 100 per cent sampling, it was disclosed that in all the barrels, the mentha oil was substituted with water, a complaint was lodged by the respondent-complainant on 18.11.2008 before the Gadarpur Police Station. In the complaint filed, specific allegation is made about involvement of staff of the respondent-Company.

11. There is a specific observation in the survey report that the security guard of the respondent-Company had allowed Mr. Sanjeev Chhabra(owner) to lift the stock. Referring to the complaint made by the respondent-Company to the Police, a request is made to take action against owners as well as the employees namely Mr. Narender Singh Yadav, who was the Warehouse Supervisor, Cluster Head Mr. Anil Saxena, Warehouse Executive Mr. Aneesh Mohd. and Security Guard Mr. Ram Singh for committing crime under various Sections of the Indian Penal Code. If the entire material is taken into consideration, it is clear that there is a clear involvement of the employees of respondent and other contract employees in substituting the mentha oil barrels with water. It is also argued by learned counsel for the appellant that during the inspection, seals were found to be intact but it does not make any difference in as much as 100 per cent sampling proved that all barrels which were earlier filled with mentha oil, were substituted with water.

12. There is yet another contention advanced by learned counsel for the appellant that there was a delay in lodging the complaint, as such, it is in violation of condition no.1 of the contract of insurance. It is clear from the impugned order and other material placed on record, when it has come to the notice of the respondent, that mentha oil was substituted by water in the barrels, respondent undertook 100 per cent sampling, by sending the samples drawn from the barrels to the laboratory and such sampling was completed only on 12.11.2008 and the investigation report

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A came to be submitted to the respondent-Company on 14.11.2008. Before that respondents were not aware of mentha oil substituted by water in all the barrels. Thereafter, claim was made before the appellant on 18.11.2008.

13. In that view of the matter, it cannot be said that there is any delay on the part of the respondent in lodging the claim, so as to accept that there is breach of condition no. 1 of the policy.

14. For the aforesaid reasons and in view of the findings recorded in the impugned order, we do not find any merit in this appeal, so as to interfere with the same. The appeal is, accordingly, dismissed with no order as to costs.

Divya Pandey

Appeal dismissed.