**(2010) 09 NCDRC CK 0036**

**In the National Consumer Disputes Redressal Commission**

BANK OF BARODA APPELLANT

Vs

Parul Agarwal D/o Shri Shiv Kumar RESPONDENT

**Date of Decision :** 01-09-2010

**Acts Referred:**

**Citation :** 2010 0 NCDRC 149 : 2010 4 CPJ 134

**Hon'ble Judges :** Ashok Bhan , Vineeta Rai J.

**Final Decision :** Petition is accordingly allowed

## Judgement

1. THIS revision petition has been filed by the Bank of Baroda (hereinafter referred to as Petitioner), seeking to challenge the order of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow, dated 10.07.2006, in Appeal No. 627 of 2004. By this appeal, the State Commission had upheld the order of the District Forum directing the Petitioner to pay Rs.86,619/- with 4% interest and Rs.1000/- as cost and Rs.31,000/- with 4% interest and Rs.1000/- as cost, respectively to Ms Parul Agarwal and Ors (hereinafter referred to as Respondents).

2. BRIEFLY, the complaint in the District Forum filed by Respondents was on the following grounds: Respondents 1 and 2 on 18.05.2000 deposited Rs. 1.00 lakh with the Banaras State Bank Ltd., (hereinafter referred to as BSBL) in Fixed Deposit for three years and on 13.11.2000 the Respondents No. 1 and 3 also deposited a similar amount in FDR for three years with BSBL. Thereafter, BSBL was merged with Bank of Baroda (Petitioner) and neither of the Banks gave any notice about the merger. On maturity of their FDRs, Respondents were paid Rs.93,841/- and Rs.1,176,986/- respectively, by the Petitioner instead of Rs.1,34,490/- assured to them on maturity of their FDRs. Thus, the Petitioner arbitrarily deducted Rs.15,000/- from the first FDR and Rs.16,504/- from the second FDR. This was a serious deficiency in service. Hence, the Respondents filed a complaint before the District Forum and the relief sought by them was for payment of Rs.31,941/- alongwith 18% interest. The contention of the Petitioner on the other hand was as follows: In order to safeguard the interests of the

depositors as well as in public interest BSBL was amalgamated with the Petitioner Bank by Government of India under Section 45 of the Banking Regulations Act, 1945. This fact was published in the Gazette of India Extraordinary and a scheme called B S B L (Amalgamation with the Appellant Bank of Baroda) 2002, was introduced by the Union Government. Para 5 of this Scheme provide for valuation of the assets and determination of liabilities of the erstwhile BSBL. It specifically indicated that the valuation of assets and liabilities in accordance with the scheme shall be binding on both the Bank and the depositors. Wide publicity was given to this scheme and notices were issued in newspapers informing the stake holders that pro-rata payment of 85.85% will be made to them. Petitioner had further stated that as per a Government notification dated 19.06.2002 no suit or legal proceedings can be filed against the appellant Bank for anything done which is in good faith and was done and intended to be done in pursuance of the said Scheme. Petitioner has further submitted that the reason why the Petitioner could only make the payment of 85.85% to depositors was because liabilities of the erstwhile BSBL exceeded the realizable value of its assets. The remaining amounts could only be paid if these were received from the Depositors Insurance Credit Guarantee Corporation (DICGC). However, till date DICGC released the remaining 14.15% only in respect of those depositors, whose deposits were less than Rs.1.00 lakh. Under these circumstances, there was no deficiency in service on the part of the Petitioner.

The District Forum, vide its order dated 20.02.2004 admitted the complaint and passed an order in favour of the Respondents, directing the Petitioner to pay Rs. 86,619/- with 4% interest and also Rs.1000/- as cost and Rs. 31,971/- with 4% interest and also Rs.1000/- as cost respectively for their two Deposits.

3. AGGRIEVED by this order, the Petitioner filed an appeal before the State Commission, wherein, it interalia cited aruling in their favour by the Allahabad High Court in Prakash Chandra and 9 Others vs Union of India and 3 others (in Civil Miscellaneous W P No. 35231 of 2002 in the order dated 29.08.2005, i.e. after the order of the District Forum). The operative portion of the High Courts order reads as follows: According to the petitioners they had deposited various amounts in the fixed deposit scheme launched by erstwhile Banaras State Bank Ltd., On account of certain unforeseen circumstances the Bank liquidity was in a bad shape, whereupon the Government of India took steps and merged it with the Bank of Baroda a nationalized Bank on certain terms and conditions. A public notice had been issued by the Bank of Baroda showing intention for making payment up to the extent of 8% of the amount deposited to certain categories by depositors. The contention of the Petitioners is that they are entitled for entire amount upon maturity of Fixed Deposits, there is no justification for making payment of only 85% of the amount of maturity. Submission is misconceived. It is not in dispute that the Petitioners, for reasons best known to them in order to avail the higher rate of interest being provided by Private Banks had invested their money in fixed deposits with the Banaras State Bank Ltd., which was a

 

private Bank. It failed whereupon in the interest of depositors the Central Government intervened and under scheme prepared by the Reserve Bank of India had merged the said Bank with the Bank of Baroda which is a nationalized Bank payment is being made under the scheme of amalgamation/merger and therefore, the Petitioners should be satisfied with the whatever amount is being paid under the Scheme.. The State Commission, while taking note of this order however, dismissed the appeal stating that it is not fair that depositors should lose their hard earned money because of an MOU that stipulates the liability to the extent of 85.85%. The State Commission, however, gave a period of six months within which the Petitioner should make arrangements to pay the outstanding amount indicated in the order of the District Forum. Immediately on the expiry of the said period, the complainants would have the right to proceed under Section 25/27 of COPRA, if the payment is not made.

4. PETITIONER has now come in revision before us. We have heard the learned Counsel for the PETITIONER. None was present on behalf of the Respondent, despite due service of notice on the Counsel for the Respondent. Learned Counsel for the PETITIONER submitted before us that the action to amalgamate BSBL with the PETITIONER Bank had become necessary because of its precarious financial condition. If Government had not taken this decision, Depositors could have lost all their money. It was to prevent such an eventuality that Government took a decision for its amalgamation on the advice of the Banking Regulator i.e. Reserve Bank of India to bail out the weak Bank under the relevant law. The entire process was duly notified and made known to all depositors and in fact objections were also invited. The present Respondents did not at any time file their objections to this Scheme. Once the said Scheme was approved it became a contract, with its terms binding on the PETITIONER and the Respondents. Learned Counsel for the PETITIONER further stated that DICGC had insured all depositors only upto Rs.1.00 lakh and it was under these circumstances, that eventually full payments were made to only those depositors whose deposits were less than that amount. Those depositors whose deposits were more than Rs.1.00 lakh could not be paid in full, since the required money was not received from DICGC. We have considered the averments of the learned Counsel and the evidence filed by both the parties. It is a fact that amalgamation of BSBL with the Petitioner Bank became necessary because of the precarious financial condition of BSBL and in such cases unless there is an intervention by the Government, the depositors would in all probability have lost all their hard earned money which had been deposited in that Bank. In fact, it is to prevent such an eventuality, that there is provision in the Banking Regulation Act, which envisages a merger of a weak bank with a strong financially viable bank. It may further be stated that BSBL underwent this financial crisis because they did not adhere to the prudential norms and rules laid down by the Regulator i.e. Reserve Bank of India. Petitioner cannot be held responsible for the consequences which resulted from the malfunctioning of BSBL. It also needs to be appreciated that unless DICGC gave the Petitioner Bank the required amount of money, it was not

 

possible for that Bank to have returned in entirety the money due to all its depositors. At best on the basis of a careful valuation of assets and liabilities of the amalgamated bank, the 2000 Scheme gave the best possible payments to the Respondents. It may also be mentioned that in addition to the ruling of the Allahabad High Court cited earlier, in favour of the Petitioner, there is also a ruling of this Commission in RP No. 803 of 2005 dated 11.05.2010 in Union Bank of India vs Triloki Nath Tandon (RP No. 1184 of 2005 Union of India vs Kusum Tandon). In this case, because of similar circumstances, the Central Government sanctioned a scheme for amalgamation of Sikkim Bank with the Union Bank of India in 1999. On the basis of its assets and liabilities, the Sikkim Bank paid its depositors only Rs.2000/- each instead of a higher assured amount. Two of the depositors filed a complaint before the District Forum and the State Commission which upheld their complaints/ appeal. The Union Bank of India came in revision before this Commission. By that time, on the basis of payments made by DICGC, assured amounts were paid to the Respondents by DICGC. Therefore, while dismissing the Petition as infructuous, this Commission gave a clear ruling that the order passed by the State Commission shall not be taken as a precedent for further reference.

5. TO sum up, we conclude that the Petitioner Bank acted in accordance with the Scheme formulated by the Government of India under a statute and after due notification which was in public interest and specifically in the interest of its depositors to ensure minimum loss of money to them. Therefore, there was no deficiency in service on the part of the Petitioner. The Revision Petition is accordingly allowed. The money deposited by the Petitioner vide draft No. 419233 dated 20.04.2004 before the District Forum be returned to them. Ordered accordingly.

 