(2001) 05 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

BANK OF INDIA APPELLANT

Vs

ORIENTAL RUGS (P) LIMITED RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Citation : 2001 3 CPJ 372

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed with cost

Judgement

1. IN this appeal the judgment and order dated 25th November, 2000 passed by District Consumer Forum-I, Agra in Complaint Case No. 266/1998 has been challenged. The facts of the case are as below.

2. THE complainant, M/s. Oriental Rugs (P) Limited, 6/109, Belanganj, Agra sent one Bill No. C-160954 dated 7.2.1996 in respect of goods supplied outside India for the value of US dollars 73670 through opposite party, Bank of India, Branch Sanjay Place, Agra. THE opposite party thereupon informed the complainant that the amount of US dollars has been credited in the account of the Bank on 22.2.1996 and an amount of Rs. 25,15,881/- has been received by exchange from US dolars at the rate of Rs. 34.15 per US dollar. THE Bank credited this amount in the complainant''s account on 1.3.1996. THE rate of US dollars in terms of exchange in Indian rupees was Rs. 36.47 on 22.2.1996 and 23.2.1996 and Rs. 34.42 on 2.3.1996 and 3.3.1996. A note received from the State Bank of India to this effect confirming the exchange rates as above has been annexed with the complaint as Annexure 2. On the above dates the calculation of the US dollars after conversion into Indian currency is as follows : Date US dollars Rate of exchange in India as informed by State Bank on 22.2.1996 22.2.1996 73670 Rs.26,86,745/-(Rs.36.47 per US dollar) Thus the total amount comes to Rs. 26,86,745/-. On 2.3.1996 the exchange rate of US dollar was Rs. 34.42. The Bank credited in the account of the complainant exchange rate of dollars at the rate of Rs. 34.15 which comes to a total sum of Rs. 25,25,831/-. Therefore, an amount of Rs. 1,70,914/- was credited less in the account of the complainant by

the opposite party, Bank. This was done by calculating the exchange rate of US dollars at the rate of Rs. 34.15 instead of Rs. 34.42, leaving a difference of 27 paise and in terms of the total amount of dollars this difference comes to Rs. 19,890.90. The complainant wrote letters dated 7.3.1996, 3.4.1996 and 26.4.1996 to the opposite party No. 2, Bank of India, International Division, Bombay and also informed the opposite party No. 1. Thereupon the matter was referred to the General Manager of the Bank in Uttar Pradesh who promised to look into the matter but nothing was done to retrieve the credit in favour of the complainant. The complainant then approached the Banking Ombudsman who decided the appeal in favour of the complainant. On a representation from the opposite party, Bank of India, the Banking Ombudsman reviewed his order dated 9.4.1997 rejecting the appeal and asked the complainant to approach the proper Forum if it deems fit. The complainant has stated that due to the intentional and negligent act of the opposite party and deficiency of service on their part he has been put to a loss of Rs. 1,70,914/- and interest of Rs. 36,575/-. He, therefore, lodged a claim before the District Forum praying for the following amounts to be awarded to him : (1)Amount credited less in his account Rs.1,70,914/- (2)Interest at the rate of 18% per annum from 22.2.1996 to 30.4. 1997 Rs.36,575.80/- (3)Physical and financial torture Rs.2,00,000/- (4)Legal and Miscellaneous expenses Rs.3,511/- In all a claim of Rs. 4,11,800.50 has been made.

In their written version before the learned District Forum the opposite party, Bank of India, have stated that they have correctly credited the amount of the conversion at Rs. 25,15,831/- on 2.3.1996, at the rate of Rs. 34.15 per dollar. The exchange rate of dollar which was prevalent on 2.3.1996 is to be considered while crediting the amount in the account of the complainant and not the date of 22.2.1996, and therefore, no loss has occurred to the complainant. The General Manager had investigated the entire matter and had rejected the request of the complainant but at the same time had also directed the branch of the opposite party, Bank of India, to credit the delay interest as per Foreign Exchange Dealers'' Association of India Rules which has already been done by the Bank. The complainant cannot, therefore, reopen the issue. The Banking Ombudsman had no right or jurisdiction to suggest the complainant to approach any other Forum after rejecting the appeal and the decision of the Ombudsman dated 17.12.1997 is final and binding on both the parties. The complainant, therefore, cannot file any complaint before the District Forum. The New Delhi Overseas Bank account of the opposite party No. 1 had credited on 22.2.1996 the amount of bills but the advice to the branch was received on 28.2.1996. On that date the time for Foreign Exchange transaction was over and, therefore, on 1.3.1996 the account of the complainant was credited. In the circumstances conversion of dollar into Indian currency was affected at the exchange rate prevailing on 1.3.1996. A sum of Rs. 3,584/- was paid as interest at the rate of 13% on 21.8.1996 in the account of the complainant as per Foreign Exchange Dealers'' Association of India Rules. The complainant, therefore, is not entitled for any claim.

3. PARTIES lead evidence before the learned District Forum in terms of the affidavits and other documents. After hearing the case the District Consumer Forum decreed the complaint and directed the opposite party No. 1 Bank of India, to pay a sum of Rs. 1,70,914/- along with interest at the rate of 10% per annum from 23.2.1996 till the date of payment to the complainant. A sum of Rs. 5,000/- was also awarded as compensation for mental torture and undue harassment meted out to the complainant. It was also directed that if the compliance of the above order was not made within 45 days then the interest shall run at the rate of 13% per annum. Aggrieved of this order the opposite party, Bank of India, has come in appeal.

4. WE have heard the arguments of the two parties. The learned Counsel for the appellant has argued that the amount of exchange was credited in the account of the complainant on 1.3.1996 because the advice was received on 28.2.1996 and as per Rules of the Foreign Exchange Dealers'' Association of India Rules interest was also allowed to the complainant. There Rules provide for the payment of interest in case the foreign exchange is retained by the Bank for some time. It was also argued by him that since the matter has already been decided by the Banking Ombudsman, therefore, there is no jurisdiction of the District Consumer Forum or the State Commission to hear the matter. On the contrary the learned Counsel for the respondent has argued that the complainant is entitled to the amount with effect from 23.2.1996 at the exchange rate applicable on that date as the Bank has already admitted that the amount was credited in the account of the Bank on that date. Therefore, in terms of rates in the foreign exchange of US dollars on 2.3.1996 on which date the credit entry was made in the account of the complainant, the exchange rate of dollar had come down to Rs. 34.42 per US dollar from Rs. 36.47 per US dollar. We have also gone through the documents placed in the appeal file. A perusal of the Foreign Exchange Dealers'' Association of India Rules as amended upto 31.12.1996 goes to show that in regard to export bill for collection a provision for application of interest has been made and it has been provided that authorised dealers will also pay interest for delay in payment to the exporter on export bills sent for collection and realized. A time limit has also been fixed in Rule B as to payment of interest. It has also been provided that where payment is to be affected to a branch of the same Bank, or another Bank at outstation centre, time limit of foreign bills has been fixed for one day and for rupee bills for seven days. In the note of the said proviso it has also been provided that if the transfers are not completed within 7 days from the time schedule fixed for execution of the payment orders, the compensation will be payable and compensation is to start from the expiry of the period for execution of payment orders. The rate of compensation would be the minimum interest charged by the Banks on export credit which is currently 13% per annum. A perusal of these Rules of Foreign Exchange Dealers'' Association of India will go to show that the Rules have been made in accordance with the Reserve Bank Circulars. On scrutiny it becomes clear that the Rules aim at

prompt and correct amount to be given to the exporter and if there is any delay interest at the rate of 13% per annum has been provided. The opposite party has admitted that they had received the proceeds of the bill on 22.2.1996 but intimation to their branch was received on 28.2.1996. A perusal of the State Bank of India (page 11 of Memo of Appeal) memo will reveal that on 23.2.1996 the exchange rate of US dollar was Rs. 36.47 and on 2nd/3rd March the US dollar exchange rate dipped to Rs. 34.42. This has not been explicitely denied by the opposite party/appellant. The Bank received the proceeds on 22.2.1996 at the rate of Rs. 36.47 and, therefore, there was no justification for the Bank not to have given this rate of exchange to the complainant. It is rather surprising that the Bank did not even pay Rs. 34.42 per US dollar in the account of the complainant, rather they credited the amount at the rate of Rs. 34.15 per US dollar. This is an unfair trade practice and clearly means that the amount which the complainant was entitled to be credited in his account on 23.2.1996 was put to loss and the amount was credited after a gap of 7/8 days by which time the exchange rate of dollar had gone down. Thus the difference was appropriated by the Bank for its own purpose. It makes no difference if the advice for the credit was received on 28th February even if the version of the opposite party is to be believed. The credit has been received by the branch of the opposite party and from that day onwards the complainant is entitled for the same. For fault of the Bank the complainant could not have been put to financial loss. The Foreign Exchange Dealers'' Association of India Rules do provide for compensation in terms of interest at the rate of 13% but it has nowhere been mentioned in the Rules that the credit received by the Bank shall not be transferred at the same rate at which the Bank had already received the same on a particular date or time. Therefore, even if for a certain period the interest has been allowed by the Zonal Manager of the opposite party, that does not at all compensate the huge loss suffered by the complainant. The Foreign Exchange Dealers'' Association of India Rules are clear as it lays down very less time of 1-3 days for different categories of payments for the foreign bills and more time of 1-7 days for rupee bills. Thus the foreign bills mostly in terms of dollars and pounds are taken care of promptly because these are hard currencies and rupee is a soft currency. Therefore, it was the duty of the Bank to have credited the amount on 23.2.1996 in the account of the complainant. The difference money so earned as a result of transaction carried out by the complainant cannot be appropriated by the Bank. This goes against the policy of the export promotion which is so dear to the government in the interest of maintaining a favourable balance of trade and to encourage the exporters. The Bank in its letter addressed to the complainant on 24.8.1996 has admitted that the proceeds of the bill were received by the Bank on 23.2.1996 but his account was credited only on 2.3.1996. In view of the above discussion we would not like to comment much on the report of the office of the Banking Ombudsman. Letter dated 9.4.1997 of the Ombudsman is clear that the nostro account of the Bank was credited on 22.2.1996 and it further states that the Bank''s branch received the amount of the bill on 23.2.1996. Therefore, the credit entry of the bill should have been done in the account of the complainant on 23.2.1996 itself at the exchange rate applicable on 23.2.1996. It is not known as to how the above letter of the Ombudsman was reconsidered. Para 5 of the letter states that the proceeds where the prevailing exchange rate at the time of payment and proceeds should be payable and not the exchange rate prevailing at the time when the nostro account was credited. The Ombudsman has passed contradictory orders and has suggested the complainant to approach any other Forum. The appellant has not been able to produce operational details of the nostro account which could go to show that the complainant was not entitled to prevalent rate of interest on 23.2.1996 and the Bank was entitled to retain the balance. In the circumstances the Banking Ombudsman was right in suggesting that the complainant could approach a proper Forum. No doubt the complainant has been able to establish his case beyond doubt before the District Forum and the District Forum has rightly decreed the complaint and, therefore, the judgment and order of the learned District Forum calls for no interference. The appeal is, therefore, liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. The appellant shall pay to the complainant a sum of Rs. 2,000/- as cost of the appeal. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed with cost.

