(1992) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Bank of Madurai Ltd. APPELLANT

Vs

ELIZEBATH RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Citation : 1992 3 CPJ 94 : 1993 1 CPR 35

Hon'ble Judges : S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Appeal allowed

Judgement

1. THE appeal arises out of the order of the District Consumer Disputes Redressal Forum, Pasumpon Mathuranayagam THEvan District dated 92 in O.P. 62/91. THE opposite parties are the appellants.

2. THE case of the complainant is that she applied to the third opposite party for a loan of Rs. 2,40,000.00 for starting a poultry farm. THE third opposite party promised to consider her case after she started the poultry with her won funds. Accordingly the complainant borrowed several sums of money to started the poultry on an investment of Rs. 1,50,000.00 about six months after the starting of this poultry, the complainant approached the third opposite party for the loan. She was advanced a loan of Rs. 20,000.00 on 11/8/1990 as first instalment and another sum of Rs. 20,000.00 on 28/8/1990 in all Rs. 40,000.00. THE third opposite party did not advance any further sum. Subsequently on 23/4/1991 the complainant submitted a project report and applied for a loan of Rs. 7,95,400.00 for the expansion of the poultry. THE third opposite party promised to recommend the loan and the poultry was inspected by the Agricultural Officer of the Bank but no loan was ultimately sanctioned. THE complainant was unable to repay the loan borrowed already and she was not in a position to run the poultry properly, because of the failure of the opposite parties to advance the loan as promised. She therefore filed this complaint for directing the opposite party to advance the loan and pay compensation in the sum of Rs. 75,000.00. The opposite parties resisted the complaint. It is pointed out that the complainant approached the third opposite party, Branch Manager for a poultry layer farm

loan with a project outlay of Rs. 3 lakhs, but her request could not be entertained since some of the poultry loans sanctioned were not successful. After starting the poultry farm with her own funds, the complainant again applied for a loan for working capital and as recommended by their'' Agricultural Officer, a sum of Rs. 20,000.00 was sanctioned on 2/7/1990 and another sum of Rs. 20,000.00 on 26/10/1990. The above loans were sanctioned as per the NABAD guidelines. The complainant found it difficult to run the poultry farm successfully and profitably due to several facts such as the complainant was working at Trichy and her husband visited the farm only on Sundays. There was no technically qualified persons or skilled laborers. The average yield was low. The mortality of birds was high. There was no separate provision for laying of eggs and no proper records for income and expenditure. The complainant did not also pay the loan arrears. In spite of this position, the complainant again applied for a loan of Rs. 7,95,400.00 on 27/4/1991 for starting a layer unit of 5000 birds capacity and the same was not sanctioned by the Central Officer based on the inspection of the Agricultural Officer. There was therefore no deficiency of service or negligence on the part of the opposite parties.

The District Forum held that it had no authority to direct the opposite parties to advance the loan, but as the opposite parties had promised to advance loan and as the complainant has invested monies only on the basis of the promise, the complainant is entitled to compensation and a sum of Rs. 75,000.00 was awarded as compensation. Aggrieved by this order the opposite parties have preferred this appeal.

3. THE complainant has applied to the third opposite party for a loan of Rs. 2,40,000.00 in September 89 for starting a poultry farm and exhibit A2 is the application therefore. This loan has not been sanctioned. According to the complainant the third opposite party asked her to start the farm with her own funds and the sanction of the loan would be considered subsequently. Assuming this is true, it does not amount to a firm promise of advancing any amount. THE complainant has started the farm, according to her on an investment of Rs. 1,50,000.00 which was raised by borrowing. She has then applied for a loan of Rs. 20,000.00 as working capital under Exhibit B2. This application itself clearly says that it is a short-term loan for the purchase of poultry feed and medicines. THE contention of the respondent that these recitals leave subsequently been filled up by the banking authorities cannot be accepted for the simple reason that Exhibit B-1 is her letter dated 13.10.90 in which the complainant has stated in categorical terms that loan had to be sanctioned for the purpose of poultry feed and medicines. This loan has been granted on 2.7.90 and subsequently another loan for the same purpose for Rs. 20,000 has been granted on 28.10.90. Both are short-term loans advanced as working capital and the total comes to Rs. 40,000.00. THEreafter the complainant has submitted a project report and applied for a loan of Rs. 7,95,400.00 for expanding her poultry farm with a capacity of 5000 birds. THE Agricultural Officer of the opposite party, Bank has inspected the poultry farm and has given pre-inspection report under Exhibit B3

and a post inspection report under Exhibit B6. In Exhibit B6 he has noted down the following defects: 1. THE borrower is working as a teacher in Trichy and her husband visited the farm only on Sundays. 2. THEre is no technically qualified persons or skilled about to maintain the farm. 3. Mr. Krokiadoss, the Supervisor of the farm has mismanaged the farm and caused considerable loss and has now quit the farm. 4. Average yield is low. 5. Change of fee affects growth of birds and yield.

6. THEre is considerable mortality of birds. 7. No proper tie up arrangements for marketing. 8. No proper record for income and expenditure. 9. No separate provision for laying of eggs which are damaged by other birds. 10. No direct supervision. 11. No replacement arrangement for supply of chickens. In view of this report of the Agricultural Officer, the banking authorities have turned down the request of the complainant for loan. THE facts and circumstances stated above would clearly show that there was no promise on the part of the opposite parties to advance loan or that the complainant embarked upon this business on the basis of any such promise, as concluded by the Forum below. In Ram Kripal Barghawa v. Union of India and Others I (1991) CPJ 23 (NC)., the National Commission has observed thus : "It is for the Bank to decide whether a particular party is eligible for credit within the frame work of the credit policy laid down by the Government of India or Reserve Bank of India namely whether the project to be financed is viable, whether the borrower is creditworthy, the history of his past performance as borrower in honoring his obligations in repayment of liabilities".

Following the aforesaid decision, this Commission in A.R. Narayanan v. The Manager, UCO Bank (1991) 1 TWN CP 143. has held that the sanctioning of loans and the grant of facilities by the bank are matters within their exclusive discretion depending upon viability of the projects, the creditworthiness of the borrower, his sense of honesty in repaying the loan etc., and it is not open to the Forum under this Act to substitute its judgment for the decision of the banks. On the basis of the report of the Agricultural Officer mentioned above, the banking authorities in the instant case have come to the conclusion that the complainant is not entitled to the loan and this decision of the banking authorities is not a matter to be reviewed by the Forums constituted under this Act. The banking authorities are dealing with public funds and they are accountable to the public in general and hence their decision in the matter of granting or withholding of loan cannot be the subject matter of judicial review. The complainant is not therefore entitled to entertain any grievance against the decision of these opposite parties not to advance loan to her for her poultry farm operations.

4. THE District Forum has referred to the aforesaid decision of this Commission and held that it cannot direct the opposite parties to advance the loan, out seems to have relied upon the very decision for holding that if there is any loss suffered by the borrower, compensation could be awarded against the banks. In the aforesaid decision, this Commission has occasion to deal with an inordinate delay

on the part of the banking authorities in disposing of the application for credit facilities. THE application bad been made in April 89 while the final order rejecting the application was made only in January 90. Commenting upon this inordinate delay, this Commission held that there was deficiency in service in the application was not disposed of promptly and if this delay had caused any loss to the complainant, he was entitled to claim the same. THE Commission found that the complainant in that case was not in any way demnified by this delay. In the case on hand, it is not the case of the complainant that there was any delay in disposing of the loan application made by her. THE short-term loans applied for have been granted by the bank and the long-term loan applied for Rs. 7,95,100.00 made on 25.4.91 has been disposed of in the month of May itself. THEre was therefore no delay on the part of the opposite parties in disposing of the loan application of the complainant As already pointed out there is absolutely nothing to hold that any promise was made by the banking authorities that loans would be advanced if she started the poultry farm with her own funds and that the complainant entered into this venture only on the basis of that promise. The claiming of the Forum below that the complainant has thereby suffered is untenable and cannot stand. In the result the appeal is allowed, the order of the District Forum is set aside and the complaint falls and is dismissed, but without costs throughout. Appeal allowed.

