(2001) 06 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

BHIMAN DAS APPELLANT

Vs

CHIEF POST MASTER GENERAL, RAJASTHAN CIRCLE RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Citation : 2004 3 CPJ 119

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Advocate : S.K.Jindal , Arun Chaturvedi

Final Decision : Allowed

Judgement

1. BHIMAN Das appellant had opened an account with the respondent Post Office on 26.11.1998 under Recurring Deposit Scheme. A sum of Rs. 3,000/- p.m. was deposited by him in that account. However, he stood in need of money for business purposes and accordingly applied on 25.11.1999 for withdrawal of the entire amount deposited by him in that account. But the respondent turned down his request on the ground that in view of the amended position of the relevant rules the deposited amount could not be withdrawn before the expiry of three years from the date of the opening of the account. By its impugned order dated 18.3.2000 the District Forum has approved the action of the respondent. Hence this appeal by the complainant.

2. HEARD the learned Counsel for the parties. Deposits under the Recurring Deposit Scheme are governed by the Post Office Recurring Deposit Rules, 1981 (Rules 1981) framed by the Central Govt. in exercise of its powers conferred upon it by and under Govt. Savings Bank Act, 1973. Rule 9A of Rules, 1981, as it stood prior to its amendment vide Gazette Notification No. GSR 748(E) dated 4.11.1999, permitted premature closure of the account by the depositors. Amended Rule 9A of Rules, 1981, however, took away the facility of pre-mature closure of such accounts. Relying upon the amended position of Rule 9A the District Forum held that by not conceding to the request of the complainant to close the account before expiry of three years period the respondent had not rendered deficient services to the appellant. In our opinion this conclusion is not

correct in law.

The source of the rule making power of the Central Govt. is Section 15 of the Govt. Savings Bank Act, 1973 which, does not empower the Central Govt. to make rules with restrospective effect. Nor does the amended Rule 9A of Rules, 1981 unequivocally declares of its having retrospective effect. It is true that the relationship between the parties is contractual in nature but simply because of respondents power to amend the rules unilaterally, it cannot be inferred that existing right of the depositors under the unamended Rule 9A may be adversely affected arbitrarily by such unilateral act. In support of such a view we may refer to the Division Bench decision of Kerala High Court in the case of Union of India and Others v. Sudha Thejus and Others, AIR 2001 Ker 6, wherein the following observations of their Lordships of the Supreme Court in the case of Mahabir Auto Stores v. Indian Oil Corporation, AIR 1990 SC 1031, were referred to: "......even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touch stone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of transactions and nature of the dealings......."

3. THE view that rules cannot be so amended with retrospective effect as to take away the contractual right of a party under an unamended rule by unilateral act of the other party finds support from another decision of the Supreme Court in the case of Bishun Narain Misra v. State of Uttar Pradesh and Others, AIR 1965 SC 1567, wherein the constitutional validity of the rule reducing age of retirement of Govt. employees from 58 to 55 years was though upheld on other grounds but it was held that the relevant rule was not retrospective in effect. In view of the above discussion and on the basis of judicial pronouncements made by the Kerala High Court and the Apex Court in the cases referred to above, we hold that since Rule 9A was not having retrospective effect the respondents rendered deficient services to the appellant by not permitting pre-mature closure of his account under the Recurring Deposit Scheme.

4. IN the result, the impugned order is set aside and the appeal allowed. Consequently, the complaint of the appellant is allowed. The respondents are directed to permit the appellant to close his account under the Recurring Deposits Scheme on his request and pay to him all the benefits available to him under the said scheme. Cost on parties throughout. Appeal allowed.