

(2006) 01 OHC CK 0035

In the Orissa High Court

Case No : Writ Petition (C) No. 15960 of 2005

Biratunga S.C.S. Ltd. (Mini Bank)

APPELLANT

Vs

Sangram Keshari Pati and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Consumer Protection Act, 1986 — Section 17, 19, 2, 3

Citation : AIR 2006 Ori 97 : (2006) 101 CLT 309 : (2006) 1 OLR 336 Supp

Hon'ble Judges : S.B. Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : S.N. Sahoo and P.R. Bhuyan, for the Appellant; Ramakanta Mohapatra, B.N. Udgata, A. Panda and A.K Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner in the present writ application has prayed for quashing the orders dated 29.7.2005 and 2.12.2005 under Annexures-1 and 2 respectively passed by the State Consumer Disputes Redressal Commission, Orissa, Cuttack (hereinafter referred to as the State Commission") in a consumer dispute case bearing C.D. Case No. 56 of 2004. The opp. party no. 1 filed C.D. Case No. 56 of 2004 before the State Commission u/s 17 of the Consumer Protection Act, 1986 (hereinafter referred to as "the C.P. Act") claiming an amount of Rs. 65, 417/- lying in deposit in his saving account with interest thereon at the rate of 18% per annum and a further compensation of Rs. 20,00,000/- for undergoing suffering, harassment and mental agony against the present writ petitioner and the opp. party no. 2. The opp. party no. 1 as complainant alleged that he opened a Savings Bank Account bearing S.B. Account No. 16.1 with the petitioner which is a Mini Bank sponsored by the United Puri-Nimapara Central Co-operative Bank Limited. The said S.B. account was opened on 12.8 1995. The opp. party no. 1 alleged that he deposited a sum of Rs. 65, 163/- in the said Account on 1.3.2002 which was duly entered into in his Pass Book. On such deposit, total amount available in the said S. B. Account

became Rs. 65, 217/-. On 11.5.2002, his father made a further deposit of Rs. 200/- in the said S. B. Account, but the pass Book could not be up dated, as when the said amount was deposited, his father did not carry the Pass Book with him. On 14.5.2004, the opp. party no. 1 went to the petitioner-Bank and wanted to withdraw a sum of Rs. 20,000/- from his S. B. Account. But he was told by the Branch Manager of the petitioner-Bank (opp. party No. 2) that due to shortage of funds, the said amount cannot be paid by the bank on that day and he should come afterwards. The opp. party No. 1 alleged that he again went on 17.5.2004 to withdraw the said amount when the Branch Manager-opp. party No. 2 asked him to hand over the Pass Book along with the deposit voucher dated 1.3.2002 under which an amount of Rs. 65,163/- was deposited by the opp. party No. 1. The opp. party No. 1 was not permitted to withdraw the said amount for which he approached the State Commission in the above C.D. Case No, 56 of 2004 claiming compensation on account of deficiency in service and a damages for suffering, harassment and mental agony.

2. The petitioner has stated in the writ application that notice in the said C.D. Case No. 56 of 2004 was issued to it fixing the date of appearance and filing of show cause as 12.7.2004. The petitioner engaged an advocate and entered appearance through him in the said case. It is alleged by the petitioner that though all material documents were supplied by him to his Advocate for drafting and filing of the show cause/counter affidavit, the said Advocate did not file the same nor remained present when the case was taken up for final hearing on 29.7.2005. After conclusion of hearing, the State Commission passed the impugned order dated 29.7.2005 under Annexure-1 directing the opp. parties in the said case, i.e., the petitioner and the opp. party No. 2 in the present writ application to pay a total sum of Rs. 65,217/- from the S. B. Account No. 161 of the opp. party no. 1 and a further sum of Rs. 5,000/- as compensation for the mental agony suffered by the opp. party No. 1. A copy of the said order dated 29.7.2005 was duly communicated to the writ petitioner by the State Commission under its covering letter dated 20.8.2005. The petitioner claims that it came to know regarding the said order only after receiving a copy of the same from the State Commission and thereafter filed Misc. Case No. 1115 of 2005 in the C.D. Case No. 56 of 2004 before the State Commission making a prayer to recall the said order dated 29.7.2005 and to allow it to file its counter affidavit and afford an opportunity of hearing, The said Misc. Case was dismissed by order-dated 2.12.2005 by the State Commission holding that the State Commission has no power to review/recall its own order.

3. Mr. S. N. Sahoo, learned Counsel for the petitioner contends that considering the fact that the petitioner is a Co-operative Society formed under the Orissa Co-operative Societies Act, 1962 and is a Mini Bank sponsored by the United Puri Nimapara Central Cooperative Bank Ltd., opp. party no. 1 could not have filed the complaint before the State Commission as Orissa Co-operative Societies Act provides for adjudication of such disputes before the prescribed authorities under the said Act. His further contention was that the petitioner having not been heard

in the matter, the impugned order dated 29.7.2005 directing payment of the amount of Rs. 65,217/- from the Pass Book of the opp. party No. 1 and further a sum of Rs. 5,000/- as compensation is in violation of the principles of natural justice and, as such, this Court can exercise jurisdiction under Article 226 of the Constitution by directing the State Commission to rehear the case after quashing the orders under Annexures-1 and 2. In support of his contention, he places reliance on a decision of this Court in the case of Executive officer, Sri Baladev Jew Bije, Keonjhar v. Smt. Anapurna Jena and Anr. 2005 (11) CLR 729 and a decision in the case of Managing Director, District Co-operative Milk Union Ltd. Vs. Presiding Officer, State Consumer Disputes Redressal Commission and Others,

4. Mr. R.K. Mohapatra, learned Counsel appearing for the opp. party No. 1 who was the complainant in C.D. Case No. 56 of 2004, on the other hand, submits that the writ application is not maintainable as there is an efficacious alternative remedy available to the petitioner by filing an appeal against the final order dated 29.7.2005 u/s 19 of the Act, before the National Commission. With regard to the order dated 2.12.2005 under Annexure-2 by which the State Commission rejected the application of the petitioner for recalling the order dated 29.7.2005, Mr. Mohapatra submits that the said order has been rightly passed as the State Commission under the C.P. Act has no power either to set aside an order passed ex parte or to recall/ review its own order. He places reliance in the case of Jyosana Arvind Kumar shah and Ors. v. Bombay Hospital Trust III (1999) CRJ 1 (SC) and the order dated 25.4.2005 passed in W.P.(C) No. , 2526 of 2005 (Shri Sarojkant Choudhury v. Secretary, State Consumer Disputes Redressal Commission, Orissa, Cuttack and Ors.) by a Division Bench of this Court.

5. In the case of Executive Officer (Supra), the Consumer Dispute was filed before the District Consumer Disputes Redressal Forum, Keonjhar with a prayer to, direct the Executive Officer of Sri Baladev Jew Bije, Keonjhar and the Commissioner of Endowments, Orissa, Bhubaneswar to execute sale deed of certain properties of the deity as per the order passed by the Commissioner of Endowments in an Original Application. The District Forum decided the case in favour of the complainant and directed Execution of the sale deed. The said order was challenged in appeal before the State Commission who by its order dated 11.12.2001 dismissed the said appeal. A contention was raised in the said case that the writ application is not maintainable in view of the availability of alternative remedy. This Court while holding that the deity being a perpetual minor and remained unrepresented, when the matter was taken up for hearing, the State Commission should have appointed a Court guardian to protect the interest of the deity and that having not been done, there was violation of principles of natural justice on account of which the order of the State Commission was unsustainable, held that where the principles of natural justice are violated by not providing an opportunity of hearing, even in the absence of any statutory provision to that effect, the jurisdiction of the High Court under Articles 226 and 227 of the Constitution can be invoked and availability of alternative remedy cannot be a bar to the maintainability of the writ application.

6. With regard to the contention of the petitioner that even though there is a provision of appeal u/s 19 of the C.P. Act, the writ application is maintainable as the allegation made by the petitioner is one of want of jurisdiction on the part of the State Commission in entertaining the consumer dispute and further the impugned order is passed in violation of the principles of natural justice, the learned Counsel relies on a decision in the case of Managing Director, District Co-operative Milk Union Ltd. (Supra). In the said decision, Hon"ble Justice P. K. Balasubramayan (as His Lordship then was) while dealing with a similar contention held that though a revision under the C.P. Act is provided against the order passed in an appeal by the State Commission before the National Commission, the writ application cannot be held to be not maintainable on account of availability of alternative remedy relying on the decision in the case of L. Chandra Kumar Vs. Union of India and others, . Mr. Mohapatra learned Counsel for the opp. party No. 1 placing reliance on the order passed by the Division Bench of this Court in W.P. (C) No. 2526 of 2005 contends that in similar situation, a Division Bench of this Court in the said writ petition has held that since a statutory appeal is available to the petitioner, the writ application is misconceived in law.

7. Since Section 3 of the C.P, Act specifically provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, we are of the view that even though the dispute raised by the opp. party no. 1 might have been raised under the provisions of the Orissa Co-operative Societies Act, 1962, but that does not bar the opp. party No. 1 to raise a similar dispute before the Forums under the C.P. Act, more so, when the allegation relates to deficiency in ? banking service on the part of the petitioner which is admittedly a Mini Bank. It is trite to hold that "banking service" is a service as defined under the C.P. Act and the opp. party No. 1 having hired the said banking service provided by the writ petitioner for a consideration, he squarely comes under the definition of a "consumer" as defined in Section 2(d) of the C.P. Act.

8. Considering the above submissions, we find that though a statutory appeal is provided u/s 19 of the C.P. Act against the order dated 29.7.2005 under Annexure-1, nevertheless, since allegation of lack of jurisdiction of State Commission and violation of principles of natural justice have been made, the writ application cannot be thrown out on the ground that alternative remedy by way of appeal is available to the petitioner. However, on examining the merits of the case, as we have already stated that the consumer dispute raised by the opp. party No. 1 before the State Commission claiming compensation for deficiency in banking service is maintainable, we are of the view that the State Commission has not committed any error in entertaining the said complaint and deciding the same on merit. We further hold that the contention of the petitioner that the order dated 29.7.2005 has been passed without jurisdiction is unacceptable.

9. With regard to the violation of principles of natural justice, as we have found

that it is admitted by the petitioner that notice was duly served on it by the State Commission directing it to appear and file counter/show cause on 12.7.2004 and the further admission of the petitioner that it appeared in the said case by engaging an Advocate, there is no scope for us to hold that the principles of natural justice have been violated in any manner.

10. Coming to the impugned order dated 2.12.2005 under Annexure-2 by which the Misc. Case filed by the petitioner-Bank for recalling the order dated 29.7.2005 was dismissed, we find that the Supreme Court, in the case of Jyotsana Arvind Kumar Shah and others (supra) while dealing with a similar question, has held as follows :

...if the law does not permit the respondent to move the application for setting aside the ex parte order, which appears to be the position, the order of the State Commission setting aside the ex parte order cannot be sustained....

11. In view of the above position of law laid down by the Apex Court, it is no more res integra that, there is no provision under the C.P. Act to set aside an ex parte judgment or to recall/review the judgment passed in a C.D. Case by the District Forum or the State Commission and, hence, no error can be attributed to the impugned order dated 2.12.2005 dismissing the Misc. Case of the petitioner-Bank filed for recalling the order dated 29.07.2005.

12. In the result, we find no merit in this writ application, which is accordingly dismissed.

S.B. Roy, C.J.

13. I agree.