(1996) 07 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, INDIAN BANK — APPELLANT

Vs

B.RAJA REDDY — RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Citation : 1998 2 CPJ 558

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , K.Ranga Raos J.

Final Decision : Appeals FA 767/93, 1287/94, 1134/94, 692/94, 830/94, 682/94, 824/95, 503/95, 400/95, 140/95 allowed

Judgement

1. IN the complaints, out of which these appeals arise, some of them were filed by the opposite parties questioning the relief granted to the complainants under Agricultural Rural Debt Relief Scheme here in after called as ARDRS, 1990 and the other appeals are preferred by the complainants whose complaints were dismissed by the District Forum on the ground that failure to waive debt under ARDR Scheme does not amount to deficiency of service on the part of the Banks i.e. opposite parties or on the ground that the complainants do not satisfy the requirements of ARDR Scheme to get any benefit of waiver, the complainants who are agricultural debtors of the Banks claimed relief of waiver of debt to an extent of Rs. 10,000/- under ARDR Scheme, 1990.

2. THE question that arises for consideration in all these appeals is whether the waiver of loan and the reliefs that were contemplated under ARDR Scheme, 1990 is a service agreed to be rendered by the Banks for a consideration, and whether the complainants are consumers. The Consumer Protection Act defines the consumer under Section 2(1)(d) as a person who buys any goods for consideration or hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other man the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment, when such services are availed of the with the approval of the first mentioned person.

The complainants in all these cases are not consumers under Section 2(1)(d)(i). But they are claiming to be consumers as they have hired or availed the services of the Banks for consideration or as beneficiaries of such services for which the consideration was paid by way of reimbursement either by the Government of India or by Reserve Bank of India. It is also their intention that waiver of a loan is part of the Banking service which the opposite party agreed to render and that, therefore, the waiver is a service within the meaning of Section 2(o) of the Consumer Protection Act.

3. IT is not in dispute that all the complainants are agriculturists who borrowed the amounts, or the L.Rs. of the original borrowers. IT is also not in dispute that in most of the cases the loans advanced by the opposite parties are prior to 1986. IT is also not in controversy that as on the cut off date i.e. 2.10.1989 fixed under the ARDR Scheme, 1990 the loans are outstanding and are due and payable to the Banks. IT, therefore, has to be considered whether the opposite parties at the time of granting of the loan agreed to render any service of waiver of the loan or such waiver was within the contemplation of the loanees and the Banks at the time of grant of loan. Since the scheme was of the year 1990, at the time of borrowing which was prior to commencement of the scheme, the parties could not have envisaged or contemplated, the notification of such a scheme giving benefits of waiver of debts to a tune of Rs. 10,000/- if the borrower satisfies the conditions laid down under ARDR Scheme, 1990. Then can it be said that the waiver of the loan amount to an extent of Rs. 10,000/- or giving other reliefs as contemplated under ARDR Scheme is part of the Banking service which the opposite party Bank agreed to render to all the borrowers for a consideration of payment of interest on the loan amount, when the Bank advances the loan for consideration on payment of interest to the borrowers, it has to provide facilities in connection with banking. But it cannot be said that waiver of debt to an extent of Rs. 10,000/- or granting of relief as contemplated under ARDR Scheme is part of facility agreed to be provided by the Bank for charging interest by way of consideration. If the waiver or relief contemplated under ARDR Scheme cannot be said to be a facility in connection with banking which the Bank agreed to provide in the absence of any specific agreement in respect of the same between the Bank and the borrower, it cannot be said that failure to waive a portion of the loan or providing any relief under the ARDR Scheme will amount to deficiency of service on the part of the Banks. But the complainants are consumers so far as the facility in connection with the loans is concerned as the complainants agreed to pay interest by way of consideration on the loan amount. The waiver is a concession which the Government of India wants to provide to all the agricultural debtors who satisfy the conditions of ARDR Scheme without payment of any consideration by the debtors for the service of waiver. Since there is a provision for re- imbursement from R.B.I. or Government of India, it is sought to be contended that for the re- imbursement to be made by R.B.I, or NABARD, the services of the Bank for waiver were hired by Government of India, R.B.I, or NABARD or the case may be for the benefit of

agricultural debtors and as beneficiaries the complainants are entitled to the relief of waiver.

4. BUT according to the ARDR Scheme, the Government or the R.B.I, merely reimburse the amount waived by the Banks, it cannot be said that the R.B.I., hired the services of the Banks by paying any consideration as the reimbursement cannot be said to be a consideration for hiring the services of the Bank, as it merely amounts to making good the amount to the Bank which the Bank has waived. Hence we are, therefore, not inclined to accept this contention. We are, therefore, of the view that the waiver of a loan to an extent of Rs. 10,000/ - or giving other reliefs as contemplated under ARDR Scheme is not for payment of any consideration .by the complainants as no consideration was paid in that regard and therefore it is not a service for consideration within the meaning of the purview of the C.P. Act and the complainants cannot be said to be consumers. Let us advert to the decisions dated at the Bar: Our attention was invited to the decision of National Commission in M/s. Sawhney Export House Pvt. Ltd. v. Noida & Ors., III (1993) CPJ 337 (NC)=1993 (3) CPR 407. In the said case, the National Commission held that "the subsidy offered to be paid is not a service and the re- scheduling of the loan and the relief in interest thereon is not a service which a financial institution renders to the loanee. It is in the nature of an accommodation and concession to a party. We, therefore, fail to see how either of the complaints can be maintained under the Consumer Protection Act. A similar view as taken by the Punjab State Commission in M/s. R.K. Industries v. The Director of Industries and Another, III (1994) CPJ 325=1994 (1) CPR 516, wherein it was observed that "the grant of subsidy is in the discretion of the Central Government and it is disbursed through the concerned State Governments and their industries departments and there is no vested right in any one of lay claim thereto.

5. IN Haryana Financial Corporation of Chandigarh v. M/s. Jamna Dass Cotton Mills of Hani, 1994 (1) CPR 311, the Haryana State Commission took the view that the grant of subsidy by the Central Government for industries to be set up in selected backward areas is not a service and is not within the purview of Section 2(1)(o) of the Consumer Protection Act. Hence since the waiver is also a concession given to the agricultural borrowers and not on payment of any consideration, it is not a service within the purview of the Consumer Protection Act.

6. THIS Commission in CDA No. 474/92 Andhra Bank, Nidubrolu Branch, Guntur Distt. v. Chigurupati Surendera Babu, by its order dated 28.4.1994 had occasion to consider the provisions of Agricultural Debt Relief Scheme, 1990 and it was observed that "the complainant is merely seeking to implement a statute or a scheme framed by the Central Government. It is not based on any agreement between the parties or payment of any consideration. The District Forum has no power to go into the question and re-open the debt and to arrive at a conclusion whether it is a renewal of an earlier debt or a fresh debt. The relief sought does

not fall under the provisions of Section 14 of the Consumer Protection Act, 1986. We, therefore, hold that there is no deficiency of service on the part of the opposite party and it is open to the complainant to seek his remedy by representing the matter to the concerned officers of the Bank or to approach the appropriate Forum to get the relief. In Syndicate Bank & Others v. Borrowers, III (1994) CPJ 425, the Kerala State Commission after referring to the decision cited at the Bar held that "it would be difficult to hold that the services rendered by the Bank for the purpose of applying the scheme to individual cases or to give relief intended to agricultural debtors would be a service within the meaning of Section 2(1)(o) of the Consumer Protection Act, and that the services rendered by the Bank in the matter of granting relief under the scheme is not a service which would come within the purview of the Consumer Protection Act and the complaints are not maintainable.

For all the aforesaid reasons, we hold that the complaints filed before the District Forum claiming the relief of waiver under ARDR Scheme, 1990 are not maintainable, as it cannot be said that there is any deficiency of service on the part of the Banks and that the complainants paid any consideration for such reliefs.

7. IN the result, the appeals FA 767/93, 1287/94, 1134/94, 692/94, 830/94, 682/94, 824/ 95, 503/95, 400/95, 140/95 are allowed, and the appeals preferred by the complainants i.e. CDA 11/94, 597/94, 659/94, 660/94, 661/94, 662/94, 663/94, 664/94, 665/95, 666/94 and FA 1127/95 are dismissed. There shall be no order as to costs in these appeals. Appeals FA 767/93, 1287/94, 1134/94, 692/94, 830/94, 682/94, 824/95, 503/95, 400/95, 140/95 allowed. CDA 11/94, 597/94, 659/94, 660/94, 661/94, 662/94, 663/94, 664/94, 665/95 666/94 and FA 1127/95 dismissed. ______________