(1995) 05 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, STATE BANK OF INDIA APPELLANT

Vs

SUNDERLAL KELA RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Citation : 1995 0 NCDRC 130 : 1995 2 CLT 164 : 1995 2 CPR 221 : 1995 3 CPJ 5

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : SANJAY KAPUR , R.P.KAPUR , S.V.PADOLEY

Judgement

1. THIS Revision Petition has been filed against the order dated 11th March, 1994 passed by the State Consumer Disputes Redressal Commission, Maharashtra by which the order of the District Forum dismissing the complaint filed by the present Respondent, Sunderlal Kela, was set aside and the Complainant was awarded Rs. 50,000/- as compensation and the Bank was also directed to restore the credit facility of the Complainant which he was availing earlier.

2. FEELING aggieved by that order the various officers of the State Bank of India who were made Opposite Parties in the complaint have filed this Revision Petition. The facts according to the Complaint are that the Respondent was granted a cash credit facility for Rs 12,500/- in the year 1973 yet he was allowed to avail the said facility upto the limit of Rs. 5 lacs for a continuous period of 17 years by the State Bank of India (For short the Bank). The Complainant alleged that the said facility was stopped unilaterally by the Bank since 15.11.90. Despite his being regular in payment and observing the rules and regulations of the Bank, the Bank treated him with bias mind. The Complainant alleged that on 20th July, 1990 he had applied for grant of cash credit limit up to Rs. 5 lacs since he was availing the said facility continuously for the last 17 years without any interruption. He had submitted all the documents to the Branch Ma-nagei, Arvi Branch of the Bank who recommended to the Divisional Office of the Bank strongly for the grant of cash credit facility. However, the Divisional Office of the

Bank rejected the proposal without any communication. The Complainant further alleged that his account in Arvi Branch has also been frozen. According to him the Bank is guilty of deficiency in banking service. The Complainant has prayed that the Bank may be ordered to restore the limit of the Complainant which was stopped on 15th November, 1990 and that it may be ordered to sanction immediately the proposal of cash credit limit forwarded by the Branch Manager. He also prayed for a compensation of Rs. 5,000/- as the officers have misbehaved with him. He also claimed a further amount of Rs. 70,000/- as compensation as on account of non-renewal of the cash credit limit he has been suffering loss of Rs. 3,000/- to Rs. 4,000/- per month since 1990. He has also claimed refund of Rs. 1,112-78 Ps. on the ground that the cash credit limits were sanctioned in 1973 and it was decided by agreement that the Bank would charge interest at the rate of 11.5% but upto 15.4.90 interest was recovered from him at more than the agreed rate of interest and though the Bank had to recover the dues of Rs. 2,23,346.65 Ps., but has recovered Rs. 2,24,459.43 Ps. from him upto June, 1991.

3. THE various officers of the Bank supported the Revision Petition. It was admitted that Kerala General Agencies of which Sunder Lai Kela is a partner, had availed cash credit hypothecation limit of Rs. 12,500/--and cash credit lock and key godown facilities for Rs. 75,000/- since 1973. Though the rate of interest since 1973 was 11.5% but it is always subject to variation from time to time as per the Reserve Bank guidelines and also as per the procedure of the Bank. The Bank has not charged any excess amount from the Complainant towards interest. Sundarlal Kela was the regular visitor of the Bank and was informed from time to time as to the prevailing rate of interest and he had also been supplied the copies of the statements of account from time to time and it was within his own knowledge as to the prevalent rate of interest from time to time. It was admitted that the Branch Manager, Arvi Branch of the Bank had recommended for enhancement of the limit, but the Regional Manager on perusal of all the transactions in the accounts, operation of the accounts, documents of the company, had to take decision for enhancement of the loan limit and on that decision the Assistant General Manager directed the Branch Manager to take suitable legal action against the Complainant as the account of the Complainant was not properly functioning and it was not desirable to enhance the limit. The Bank has given overdraft facilities to the Complainant without any documentation, but it was so given on the request of the Complainant to the Branch Manager. Though the then Branch Manager had obtained some documents for renewal of the limits, but the Branch Manager is not the Sanctioning Authority and it is the Regional Manager who has to consider the proposals and take a decision and he took a decision to stop the loan account of the Complainant on going through the various documents. The Complainant was never granted a limit of Rs. 5 lakhs nor the cash credit account. On the contrary, on the request of the Complainant the Bank official had been allowing overdraft account. The Bank communicated to the Complainant and brought to his notice

vide letter dated 4th March, 1991 (which is at page 68 of the paperbook) that the financial position of the unit had considerably deteriorated and so also the operations of the accounts have been persistanty unsatisfactory and the unit had many creditors and debtors. Hence, the financial position of the Complainant was dubious and it was not in the interest of the Bank to allow over drawing in the account of the Complainant. Under the circumstances the Bank decided to call up the advance by discontinuing the limit. The outstanding loan amount in the account of the complainant as on 31st March, 1990 was above Rs. 3 lacs in both accounts and thus taking into consideration the financial position of the Complainant, the limit was discontinued and operation of the loan account was stopped.

4. THE District Forum after consideration of all the documents by detailed order running into 12 pages came to the opinion that the decision to enhance the cash credit facilities or to allow to avail cash credit limits was within the discretion of the Bank and in view of the scope of Section 14 of the Consumer Protection Act, the direction prayed for by the Complainant could not be given and further there was no deficiency in service on the part of the Bank. Accordingly, the complaint was dismissed. As noticed above, the Complainant filed an appeal before the State Commission which was accepted and he was granted reliefs which have already been noticed above. After hearing the arguments of learned Counsel for the parties and going through the records, we are of the opinion that the order of the State Commission setting aside the order of the District Forum dismissing the complaint cannot be upheld. The State Commission has based its judgment on the fact that when the Branch Manager had recommended for the enhancement of the limit to the Complainant, the Senior Officer of the Bank ought to have accepted the limit as the Branch Manager had given good reasons for coming to the conclusion that the Complainant was deserving enhancement of the limit. We are of the opinion that the State Commission exceeded its jurisdiction while accepting the appeal. The Complainant had never been sanctioned the limit of Rs. 5 lakhs. It is admitted by the Complainant in the reply to the memorandum of appeal that he was unofficially enjoying the enhancement of the limit since long time and he did not ask for the enhancement of the limit, but the Branch Manager had advised him for the same. If the Branch Manager was unofficially obliging the Complainant to overdraw certain amounts it does not mean that the Complainant as of right was entitled to avail that enhancement limit. To regularise the procedure, the Branch Manager might have advised the Complainant to apply for enhancement of the limit. It is clear from the pleading of the Bank that though the limit allowed to the Complainant was only to the extent of Rs. 12,500/- in the cash credit facilities and Rs. 75,000/- in the godown key and lock facilities, but both the accounts had been overdrawn to the extent of about Rs. 3 lacs. It is also not in dispute that after the decision by the District Forum the Bank has since filed a suit for the recovery of Rs. 2,28,719/- in the Court of Civil Judge, Senior Division, Wardha.

5. IT has been repeatedly held by this Commission that it is for the Bank to

decide whether a particular party is eligible for the grant of credit within the framework of the credit policy laid down by the Government of India and the Reserve Bank of India. The credit worthiness and also the repayment power of the borrower have also to be seen. It has further been held that it will not be open to this Commission to substitute its judgment for the decision to be taken by the Bank, for giving credit. Reference in this respect can be made to Ram Kripal Bhargava v. Union of India, 1 (1991) CPJ 23.

6. OF course, if there is any evidence of any abuse of exercise of their authority for giving credit by the Bank or financial institutions, then a forum constituted under the Consumer Protection Act can grant relief to a consumer. In the present case we do not find any abuse of exercise of power by the Bank officials. The limits sanctioned to the Complainant have already been noticed above. However, in both the accounts the Complainant had overdrawn more about 3 lacs and thus had committed financial irregularity. He had been asked to liquidate his overdraft, but he failed to do so. Therefore, the senior officers of the Bank were justified in rejecting the recommendations made by the Branch Manager about the enhancement of the limit. The State Commission had referred to on some orders of this Commission where the stoppage of current account by the Bank in some circumstances was not upheld. In the present case there is no question of stoppage of any current account of the complainant. The money in the account of the Complainant is of the Bank. Therefore, the Bank was justified in asking the Complainant to liquidate the overdraft and stopped further advances.

7. WE do not want to dwelve on this point as the point has been discussed in detail by the District Forum. All the documents produced before it were duly considered by it. The State Commission failed to discuss most of the documents produced by the parties. As noticed above, it only relied on the recommendations of the Branch Manager, Arvi Branch, made on the application of the Complainant for enhancement of the cash credit limit. For the reasons given above we hold that the State Commission has acted in exercise of its jurisdiction with material irregularity. Consequently, we accept the present Revision Petition and set aside the order passed by the State commission and restore that of the District Forum, he appellants will get costs which we assess at to. 3,000/-.

