
(2000) 04 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

CANBANK Mutual Fund

APPELLANT

Vs

R.N.MITTAL

RESPONDENT

Date of Decision : 09-04-2000

Acts Referred:

Citation : 2002 1 CPJ 174

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , S.P.Saberwals J.

Final Decision : Ordered accordingly

Judgement

1. ALL the above mentioned appeals arise out of a common order dated 31.1.1997, passed by District Forum-II, in Complaint Case Nos. 504/1996 entitled - Shri R.N. Mittal v. Canbank Mutual Fund & Anr.; 505/1996 - entitled Smt. Rukmini Devi v. Canbank Mutual Fund & Anr.; 506/1996 - entitled Shri Anand Kumar Gupta v. Canbank Mutual Fund & Anr.; 507/1996 - entitled Shri Anand Kumar Gupta v. Canbank Mutual Fund & Anr.; 508/1996 - entitled Smt. Veena Gupta v. Canbank Mutual Fund & Anr.; 509/1996 - entitled Shri Rajesh Kumar Mittal v. Canbank Mutual Fund & Anr.; 510/1996 - entitled Ms. Parveena v. Canbank Mutual Fund & Anr.; 511/1996 - entitled Ms. Padmini v. Canbank Mutual Fund & Anr.; 512/1996 - entitled Ms. Prabhati v. Canbank Mutual Fund & Anr.

2. INITIALLY, the Canbank Mutual Fund (hereinafter referred to as Canbank) had filed a consolidated appeal against the respondents but later on filed nine separate appeals under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") against the respondents. The respondents, Shri R.N. Mittal & Ors. also filed separate cross appeals against the order of the District Forum. Since all these eighteen appeals arise out of a common order, have common facts and also raise common questions for consideration, the same with the consent of the parties, have been heard together and are being disposed of by this common order.

The facts, relevant for the disposal of the above mentioned appeals, in brief, are that the respondents, Shri R.N. Mittal & eight others (hereinafter referred to as

"the shareholders") had filed separate complaints under Section 12 of the Act, before the District Forum, averring that, Canbank was carrying on the business of floating Mutual Fund Schemes and managing them in accordance with the terms and conditions published governing the same and that the Canbank Financial Services Ltd. (hereinafter referred to as CFS) was the Registrar and the Transfer Agent for a number of Schemes, floated by Canbank and as such was authorised to handle all the work relating to the said Schemes including redemption of shares, debentures etc. It was further averred by the shareholders, in their respective complaints, filed before the District Forum that in June, 1991, Canbank had floated a scheme called Canbonus, which was eligible for redemption in June, 1996 and the main features of the said scheme were published in a journal called Cantimes published by Canbank. In two such publications of Cantimes relating to the period July-September, 1991 and also in a subsequent publication, the date of redemption of Canbonus shares was specifically mentioned as June, 1996. It was stated by the shareholders that three publications of Dalal Street Journal relating to the period August 8-21, 1994; August 22-September 4, 1994; May 1-14, 1995 also mentioned the year of redemption of Canbonus Scheme as June, 1996. It was alleged by the shareholders that relying upon the said publications they had purchased the shares under the Canbonus Scheme from the open market, on the presumption that the same would be redeemable by June, 1996. However, when the shareholders wrote to CFS vide letter dated 11.2.1995 requesting for information regarding redemption of the shares of Canbonus Scheme, they were informed that the same were redeemable only in 1998-2000. Since the shareholders required the funds urgently and in view of the fact that the Canbank and CFS were going back on their commitment regarding redemption of shares, in 1996, the shareholders filed their respective complaints before the District Forum praying for directions to the Canbank & CFS for redeeming their Canbonus Shares by June, 1996 and in case of default or delay, to direct them to pay penalty of Rs. 1,000/- for every month's delay beyond June, 1996. The shareholders also prayed for compensation and costs in their respective complaints filed before the District Forum.

3. NO reply/written version to the above complaints was filed on behalf of CFS. However, Canbank in its reply/written version, filed before the District Forum, controverted the averments made by the shareholders in their complaints and stated that there was no deficiency in service on the part of Canbank. It was further alleged that the Canbank had floated a growth oriented scheme, having a duration of 7-10 years and the units of the said Canbonus scheme were offered only to the existing unit holders of other schemes of Canbank Mutual Funds and that the offer memorandum circulated with respect to the said scheme specifically mentioned the duration of the scheme as 7-10 years from the date of allotment. It was further stated that the Canbonus scheme floated by the Canbank was subject to SEBI regulations and the units/shares issued under the said scheme could not be redeemed prior to the date of redemption, as the

Scheme had about three lakh investors and as per SEBI regulations, the same could be wound up only on the happening of the conditions mentioned in the said regulations and as such there could be no premature winding up of the scheme. It was further stated by Canbank in its reply/written version filed before the District Forum, that the shareholders in the instant case were not consumers and that there was no hiring of service for consideration since the publications relied upon by them were circulated free of charge to the existing unit holders only and were not offered for sale to public and, therefore, neither any consideration had been paid nor promised by the shareholders for the said publication. Furthermore, the defence of the Canbank was that the shareholders/unit holders could have sold the units in the open market as and when they required the money, since the same were listed securities of Stock Exchange. It was also alleged that the date of redemption shown through Cantimes Publication for the period July-September, 1991 had occurred on account of a printing error and that the same had been immediately rectified by printing the correct date of redemption as 1998-2001, in the brochure which was circulated among all its investors. It was further stated that so far as the publication of Dalal Street Journal was concerned the Canbank had no control or connection with the said Journal and as such was not responsible for material printed therein. The learned District Forum, vide impugned order, while holding that there had been deficiency in service on the part of Canbank, directed the Canbank to ensure redemption of Canbonus shares held by the unit/shareholders within a month from the date of order at the NAV rate prevailing at the time of redemption together with Rs. 500/- as cost of litigation to each shareholder.

4. AGGRIEVED by the abovesaid order, the shareholders, as well as, the Canbank have filed separate appeals before this Commission. We have carefully perused the documents/material placed on record as well as have gone through the written submissions and have heard the arguments addressed on behalf of the parties. Since both the parties have challenged the impugned order, it would be pertinent to refer to the rival contentions set up by them in the present appeals. The sole contention of the shareholders is that the District Forum should have directed the Canbank to redeem the Canbonus units, held by the shareholders at the net asset value (NAV) prevailing in June, 1996 instead of the NAV prevailing at the time of redemption. Whereas, the Canbank has challenged the impugned order in its entirety on the ground that there has been no deficiency in service on its part. It was also contended by Canbank that compliance of directions as per the said order would result in premature winding up of the scheme in contravention of the guidelines laid down by the Reserve Bank of India (RBI) as well as Securities and Exchange Board of India (SEBI). In order to appreciate the controversy involved in the present proceedings it would be appropriate to revert to the case made out by shareholders in their respective complaints filed before the District Forum. It is contended by the shareholders that the Canbonus Scheme was redeemable in June, 1996 as had been represented by Canbank, as well as C.F.S., through their July-September, 1991 publication of Cantimes and a

subsequent issue, as well as, through publications of the Dalal Street Journal. Thus, the shareholders had been induced into buying the shares/units of Canbonus Scheme on the presumption that the same would be redeemable in 1996 but contrary to the said representations Canbank had later on modified the Scheme and informed the shareholders in reply to their letter dated 11.12.1995 that the Scheme was redeemable after the expiry of 7 years and before the 10th year i.e.1998-2001. It was, therefore, alleged that shareholders were entitled to be compensated for the loss and inconvenience suffered by them. The shareholders had also raised the plea of promissory estoppel against the Canbank and CSF in their written submissions filed before this Commission and had in that regard relied upon three decisions of the Hon'ble Supreme Court in cases entitled *M/s. Motilal Padampat Sugar Mills Company Limited v. The State of Uttar Pradesh & Ors.*, reported as AIR 1979 SC 621; *The Union of India v. Anglo Afgan Agencies*, reported as AIR 1968 SC 718; and *Collector of Bombay v. Municipal Corporation of the City of Bombay*, reported as AIR 1951 SC 469. In case *M/s. Moti Lal Padampat Sugar Mills Company Limited v. The State of Uttar Pradesh (supra)*, their Lordships of the Hon'ble Supreme Court while considering the doctrine of promissory estoppel have held : "Doctrine of promissory estoppel has been variously called "promissory estoppel", "requisite estoppel" and "new estoppel". It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity."

(Emphasis supplied) The principle/doctrine of promissory estoppel enunciated in the above decision is not strictly applicable to the facts of the present case. The same would have been applicable only if Canbank had in the original offer memorandum/rules and regulations of the Canbonus Scheme represented that the Scheme would be redeemable by the year 1996, and had thus induced the shareholders by the said representation into purchasing the units/shares of the said Scheme and had later on tried to change the date of redemption, but that is not the case, before us. As is apparent from the Offer Memorandum and Rules

and Regulations of Canbonus Scheme (annexed as Annexures B and C pages 17 to 19 of the appeal), the duration of the abovesaid scheme was between 7 to 10 years and having been launched in May, 1991 the date of redemption of the same would be between 1998-2001. Merely because of a printing error, in one or two publications of the Cantimes published by the Canbank, as well as by some other journals over which Canbank had no control, would not entitle the shareholders to claim the benefit on the grounds of promissory estoppel so as to afford it a cause of action for compensation under the Act. The facts of the decisions relied upon by the shareholders, mentioned above, are on an entirely different footing from the facts of the present case and as such the aforesaid decisions of the Hon'ble Supreme Court in no way help or advance the cause of the shareholders in the present case. It is further pointed out that in order to claim compensation under the Consumer Protection Act, the cause of action accruing to the complainant has to arise out of either deficiency in service or defect in goods and the Doctrine of Promissory Estoppel would probably give rise to a cause of action before a Civil Court but not under the Consumer Protection Act. Even otherwise the said plea has been raised for the first time, in appeal.

5. FURTHERMORE, the plea of the shareholders that relying upon the publications of Dalal Street Journal and Cantimes they were induced into purchasing the units/shares of the Canbonus Scheme on the presumption that the same would be redeemable in June, 1996, has no sound basis. It is an admitted fact by the shareholders that they had purchased the units of the Canbonus Scheme in February, 1994 whereas the Journals of Dalal Street publications relied upon by the shareholders pertain to August-September, 1994 and May, 1995 and as such it is apparent that the said publications are subsequent in time to the date of purchase of the units and as such could not have been the basis for the purchase of units/shares by the shareholders. Even the publications of Cantimes which are admittedly published by Canbank, pertain to the year 1991-1992 whereas the shareholders purchased the units in question in 1994 i.e. almost after 2 years. As such any prudent person in the normal course would have taken the precaution of inquiring, into the original rules and regulations of the scheme from either the Stock Exchange or from the Canbank directly in order to verify the terms and conditions of the said Scheme. Since the shareholders did not bother to verify or revert to the terms and conditions of the Canbonus Scheme before purchasing the units/shares, they cannot lay the blame on Canbank for having induced the shareholders into purchasing the Canbonus units.

6. FURTHERMORE, it is the own case of the shareholders that while purchasing the units in question they had also acted on the recommendations of one Brig. B.N. Dutt whom the shareholders held in high esteem, as a well known share dealer of Delhi. It does not stand to reason that the said Brig. B.N. Dutt, who is alleged to be a knowledgeable share dealer, was not aware of the date of redemption as mentioned in the original terms and conditions of the Scheme and in case the shareholders have been misguided or have been misinformed by the said share broker then the cause of action, if any, regarding deficiency in service

would arise against the said Brig. B.N. Dutt and not against Canbank. It would also be pertinent to point out that Brig. B.N. Dutt has neither been made a party to the present proceedings nor it has been brought on record as to whether the said broker was aware of the terms and conditions of the Canbonus Scheme or had merely relying upon one or two issues of the Cantimes recommended the purchase of units to the shareholders. It was further contended on behalf of the Canbank that the said publication Cantimes was only meant for private circulation, free of charge for its investors and was never put to sale in the public and as such the said publication was not meant for the consumption of the public at large. The said contention of the Canbank is not without merit and the said fact is not denied by the shareholders. Furthermore, the case of the shareholders is based on the premises that because of deficiency in service on the part of the Canbank and Canbank Financial Services, they have suffered loss, as well as, have undergone mental harassment and agony, as they were in dire need of their money in 1996 and the Canbank refused to redeem their units at the N.A.V. prevailing at that time. The said contention of the shareholders is also devoid of merit. As has been pointed out by the Canbank, the units of the Canbonus Scheme purchased by the shareholders were listed on all the major Stock Exchanges and could have been disposed of by the shareholders by selling the same in the market whereby the shareholders would have recovered the money invested by them at the N.A.V. prevailing in 1996. Thus, it was not the case where if Canbank had refused to redeem the units the shareholders had no other option but to wait for the winding up of the Scheme. Therefore, even in terms of Section 14 of the Act in order to claim compensation it is essential on the part of the complainant to prove the actual loss or injury suffered by the consumer on account of negligence on the part of the opposite party. In the instant case the shareholders have nowhere disclosed the net asset value prevailing in the year 1996, as well as, on the date of redemption of shares/units by the shareholders i.e. May, 1999 so as to enable this Commission to ascertain the loss, if any suffered by them on account of non redemption of the units by the Canbank and Canbank Financial Services in June, 1996. Furthermore, the underlying principle for claiming compensation is that the claimant must mitigate its loss to the extent possible. Had the shareholders apprehended a loss in terms of money in case of delay in the date of redemption by Canbank then in that event a duty was cast on the shareholders to have sold the units in the open market at any of the Stock Exchanges and then claim the actual loss sustained. Nowhere in the pleadings is there a whisper of any loss sustained on account of deficiency in service on the part of Canbank and Canbank Financial Services. As such, in the circumstances of the present case no case of deficiency in service is made out on the part of either Canbank or the Canbank Financial Services and as such no relief in terms of Section 14 of the Act can be granted to the shareholders.

Therefore, in view of the above discussion the appeals filed by the Canbank are allowed and the impugned order is set aside. Consequently, the appeals filed by the shareholders are dismissed as devoid of merit. However, in the circumstances

of the case, there is no order as to costs. The present appeals are disposed of in above terms. Ordered accordingly.