

(2008) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

DYNAN MANDIR SHIKSHAN SANSTHAN NAGPUR	APPELLANT
Vs	
RECEIVER NAGPUR DISTRICT CENTRAL CO-OPERATIVE BANK LTD	RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Citation : 2008 3 CPJ 365

Hon'ble Judges : K.S.Gupta , S.K.Naik J.

Advocate : Sanjay Dharmadhikari , V.T.Bhaskar

Judgement

1. -THIS revision petition has been filed by Dynan Mandir Shikshan Sanstha, Nagpur, assailing the order dated 19. 4. 2006 passed by State Consumer Disputes Redressal Commission, Maharashtra (for short "state Commission") in Appeal No. 1440/2005 vide which the State Commission has quashed and set aside the order dated 14. 5. 2005 of the District Consumer Disputes Redressal Forum, Nagpur in complaint No. 163/2003 allowing the complaint and directing the opposite party No. 2 to credit an amount of Rs. 59,475 in the account of the complainant society and also to pay interest @ 9% p. a. from the date of withdrawal. Facts of the case narrated shortly are that :

2. THE petitioner society was the complainant before the District Forum. The complainant's case was that it operated two different accounts : Account No. 170 - salary account and the other Account No. 171 - non-salary grant account with the Nagpur District Central Cooperative Bank Ltd. , the opposite party No. 2 before the District Forum and respondent No 2 herein. As per the society, the non-salary grant account No. 171 was to be operated only under the joint signatures of Head Mistress of the School and the Secretary of the Society. The Bank vide letter dated 11. 2. 2002 had been informed that Mr. Dharmadhikari, being the newly appointed Secretary of the Society, his signature is required to be obtained as the second signatory for the operation of non-salary grant account. The Society received a non-salary grant of Rs. 59,475 from the Zilla Parishad which was deposited in Account No. 171 (non-salary grant account) of

the Bank on 19. 6. 2002. This amount, however, was allowed to be withdrawn by the Bank only with the single signature of the Head Mistress, Mrs. Kumud Bhure, who it appears misappropriated the amount. Since the opposite party No. 2 - Bank had permitted the operation of account No. 171 by a single signatory, in total disregard to the direction given by the Society, a complaint was filed by the petitioner Society before the District Forum alleging deficiency in service by opposite party No. 2 - Bank and its Receiver.

The District Forum, after perusal of the evidence adduced by both the sides, rejected the plea of the opposite parties that the instruction of the society was not binding on them and held the Bank liable, resulting in the order stated earlier.

3. WHEN the opposite parties filed an appeal before the State Commission, the order of the District Forum was quashed and set aside holding that no liability could be fastened on the Bank as Smt. Kumud Bhure, Head Mistress who was the Society's own employee had withdrawn the amount and may be she had misappropriated the same. The State Commission was of the view that the complainant Society should have taken action against Smt. Kumud Bhure, their own employee and for technical lapse such as not obtaining the signature of the Secretary could not be termed as any deficiency in service by the Bank. The State Commission, therefore, accepted the appeal of the opposite parties and set aside the order passed by the District Forum and dismissed the complaint. Aggrieved thereupon, the original complainant is before us in revision.

4. LEARNED Counsel for the petitioner has contended that the order passed by the State Commission is absolutely illegal. It has been made without application of mind contrary to the facts and circumstances as also ignoring the documents on record. While the State Commission emphatically states in its order that the school has opened only one account bearing No. 171, the opposite parties themselves in paras 1 to 4 of Memo of Appeal admit that the petitioner/original complainant had two different accounts. On the face of this admission by the opposite parties, the State Commission has erroneously held that "it was not proved that there were two accounts opened by the complainant - society, one for salary grant and other for non-salary grant. " Referring to the report of the Commissioner appointed by the District Forum to find out as to whether any letter dated 11. 2. 2002 directing the Bank to operate account No. 171 jointly was on the records of the Bank, the Counsel submits that such a letter was available on the records of the Bank. It was thus incumbent upon the Bank to have complied with this direction of the petitioner/complainant. The State Commission has completely gone wrong in holding that just because the Head Mistress was the employee of the society, Bank could be absolved of its responsibility. The action against the Head Mistress for misappropriation is a totally different cause of action and the State Commission could not have related it to the allegations of deficiency in service by the Bank. The Counsel, therefore, submits that the order passed by State Commission being illegal and erroneous needs to be set aside. We have perused the records carefully. In this case as

reported by the Registry, revision petition has been filed with a delay of 122 days. The petitioners in their application for condonation of delay have explained the delay primarily on the ground that it is a registered society and is running number of schools and its functioning is regulated through the Managing Committee whose meetings could not be called for valid and genuine reasons as the required number of members were not available. Besides, the delay also occurred on account of obtaining the opinion of the Counsel who retained the file for about a month and later expressed his personal difficulty in attending the matter at New Delhi. It has also been stated therein that the Secretary of the Society who was authorised to pursue the matter suffered from Chicken Gunia, and his absence on medical ground also contributed to the delay. The delay was not intentional.

5. EVEN though the respondent/opposite parties have contested the request for condonation of delay, we are of the view that the delay of 122 days deserves to be condoned specially keeping in view the observation of the Supreme Court in the case of Ram Nath Sao @ Ram Nath Sahu and Ors. v. Gobardan Sao and Ors. , II (2002) SLT 240=2002 (3) SCC 195, in which it has been held that-"to advance substantial justice, the acceptance of explanation should be the rule and refusal an exception. the more so when no negligence or inaction or want of bona fide can be imputed to the litigant. "

6. ON the merits of the case, we find that the main question centres around whether the opposite party - Bank in view of the letter dated 11. 2. 2002 directing them to permit the operation of account No. 771 only under the joint signatures of the Head Mistress of the School Mrs. Bhure and their Secretary, Mr. Dharmadhikari could have permitted withdrawal of any amount from that account only under one signature of Head Mistress, Mrs. Bhure. In our view, the District Forum had rightly held that the Bank was negligent in not obeying the instructions given by the complainant. It was wrong on part of the State Commission to have linked this omission on part of the Bank to misappropriation or otherwise by the Head Mistress, Mrs. Bhure. The issue for adjudication being whether there was any negligence or deficiency in service by the Bank in permitting operation of account No. 171 only by the Head Mistress when the Society, being the account holder had issued written instruction to allow/validate operation only with the joint signature of Head Mistress and the Secretary; the State Commission could not have travelled to extraneous issue of the Head Mistress being the employee of the complainant had misappropriated the amount and hold the complainant liable to recover the amount from the Head Mistress. Operation of a Bank account under joint signatures of more than one authorised person is a measure adopted even by the Banks to prevent misappropriation, fraud and malpractice and had the respondent No. 2 Bank complied with the instructions of the petitioner, the Head Mistress could not have withdrawn the amount with her lone signature Either there has been negligence on the part of the concerned Bank employee or connivance in permitting withdrawal with only one signature Either way, clearly there has been deficiency in service. On facts,

the State Commission has totally gone wrong in holding that the Society maintained only one account while the opposite party-Bank itself in para 3 in their Memo of Appeal before the State Commission has clearly stated that the complainant operated two accounts i. e. Account Nos. 170 and 171 and later account was operated towards the non-salary purpose. The State Commission has referred to the ambiguities in the legal notice issued by the Advocate of the petitioner prior to the filing of the complaint before the District Forum to arrive at the conclusion that the petitioners maintained only (No. 171) account. It was a totally misplaced reliance. The State Commission ought to have noticed that the respondent No. 2 Bank itself in their Memo of Appeal had admitted that the petitioner maintained two accounts. Moreover, when the Commissioner appointed by the District Forum, after inspection of the Bank's record had reported that the Bank operated two different accounts of the petitioner and that vide letter dated 11. 2. 2002, the petitioner had requested the Bank to validate operation of Account No. 171 with the signature of Shri Dharmadhikari as the second signatory, the State Commission without any reference or discussion of the Commissioner's report has totally gone wrong in holding that, there was only one account and that no instruction/letter to authorise operation under joint signature existed. Findings given by the State Commission are totally contrary to the facts on record.

During his submissions, the learned Counsel has informed us that Mrs. Bhure has since quit the service of the Society. Since the Society has been deprived of the amount of 59,475, we feel that the end of justice will be met if the opposite party - Bank is ordered to pay this amount to the Society with 5% rate of interest per annum and if deemed appropriate they may recover the same from their employee or Mrs. Bhure as advised. The revision petition, is, accordingly, disposed of with this modification. Order to be complied with within a month failing which respondent No. 2 would be liable to pay interest @ 9% p. a. till the date of payment. Revision Petition disposed of.