**(1999) 08 NCDRC CK 0006**

**In the National Consumer Disputes Redressal Commission**

KARUR K.C.P.PACKAGINGS LIMITED APPELLANT

Vs

Senior Superintendent of Post Offices RESPONDENT

**Date of Decision :** 21-08-1999

**Acts Referred:**

**Citation :** 2000 2 CLT 301 : 2000 2 CPC 315 : 2000 2 CPR 527 : 2001 3 CPJ 336

**Hon'ble Judges :** E.Padmanabhan , M.K.Sayekumari J.

**Final Decision :** Appeal partly allowed

## Judgement

1. THE appellant herein filed a Complaint No. 12/98 before the District Consumer Disputes Redressal Forum, Pondicherry and after contest the same was dismissed by the District Forum by order dated 2nd April, 1998. Being aggrieved by that order the appellant had preferred this appeal.

2. HEARD Mr. C. Jagadeesan, learned Counsel for the appellant and Mr. R. Balaraman, learned Counsel for the respondent. For convenience, the facts of the case as narrated before the District Forum are re-produced as follows,

The complainant had purchased 6-year National Savings Certificate (VIII Issue), for a sum of Rs. 14,500/- from the respondent''s post office on 8.8.1995 a part of it and remaining on 11.9.1995. According to the complainant the opposite party is liable to pay a sum of Rs. 29,217.50 being the maturity value, on all the certificates on the maturity of the certificates under the scheme. While so the respondent by letter dated 15.11.1997 called upon the complainant to surrender the certificates and get the actual amount remitted as the issue of certificates in favour of the complainant is contrary to the scheme and Statutory Rules. This was objected to by the complainant. At this stage the complainant had approached the District Forum complaining deficiency of service.

3. THE District Forum framed three points for consideration and held that the very issue of National Savings Certificates (VIII Issue) is contrary to the scheme. THErefore, the complainant is not entitled for interest nor he is entitled to compensation, nor the complainant is entitled for any costs. In this appeal Mr. C.

 

Jagadeesan, learned Counsel for the appellant contended that the order passed by the District Forum is vitiated by illegalities and material irregularities. The learned Counsel also contended that there is no prohibition or bar in the scheme or the Statutory Rules governing the National Savings Certificates (VIII Issue), 1989 from the complainant Company purchasing the said certificates. According to the learned Counsel for the appellant though the appellant is a public Company it had submitted the application, subscribed the principal amount for the issue of NSC (VIII Issue) and had validly acquired a right to hold the certificates and secure payment of the sum assured on the date of maturity. The action of the opposite party in calling upon the complainant to surrender the certificates and collect the principal amount invested is uncalled for and, therefore, it is a deficiency in service.

4. CONTRARY to that the learned Counsel for the respondent contends that in terms of the Statutory Rules viz., the National Savings Certificates (VIII Issue) Rules, 1989, the appellant Company is not competent to purchase the certificates and the issue by the post-office is void and such certificates will not confer any right. Therefore, the opposite party had rightly called upon the complainant to surrender the National Savings Certificates and collect the money actually remitted for the purchase. Mr. R. Balaraman, learned Counsel for the respondent contends that no interference is called for with respect to the order of the District Forum. The points that arise for consideration in this appeal are : (1) Whether the complainant is a holder of valid NSC (VIII Issue) Certificates, and whether he could enforce the same in law ? (2) Whether there is any deficiency ? (3) Whether the respondent is estopped from contending that the certificates are void, invalid and unenforceable ? (4) To what relief ?

5. THERE is no dispute that the complainant had submitted application and purchased the National Savings Certificates for the value of Rs. 14,500/- either on 8.8.1995 or on 11.9.1995. The certificates are purported to have been issued under National Savings Certificates (VIII Issue) Rules, 1989. THERE is no controversy in this respect. The Statutory Rules governing the issues of the said certificates being National Savings Certificates (VIII Issue) Rules, 1989, have been framed in exercise of the powers conferred by Section 12 of the Government Savings Certificates Act, 1959. It is clear that without reference to the amendment made by subsequent notification the certificates have been issued in favour of the complainant by the opposite party.

6. A perusal of the Amendment Notification would show that the said Rules have been amended by Notification dated 8th March, 1995 with effect from 1st April, 1995. A reading of the National Savings Certificates (VIII Issue) Rules, 1989, as amended by the National Savings Certificates (VIII Issue) Rules, 1995 would show that a Company like the complainant cannot purchase certificates nor it could be issued in favour of the Company. In terms of Rule 4 of the said Rules such a certificate - NSC (VIII Issue), it is not permissible for the post-office to issue a certificate in favour of the complainant, a public Company. Obviously on

 

the date of the application when it was entertained and on the date of the issue of the certificates, the respondent was not either aware of the amendment or ignorant of it or not been intimated of the Amendment. However, the amendment has come into force with effect from 1st April, 1995. The certificates have been issued after the amendment. Hence, the issuance of the very certificate in favour of the complainant is void ab initio. Therefore, it follows that the certificates have not been issued validly and the complainant is not holding the certificates validly. The first point is answered accordingly. It is needless to state that the complainant cannot enforce the certificates as it is void. Mr. C. Jagadeesan, learned Counsel for the appellant contended that the respondent is estopped by conduct. The very issue of certificate should be in accordance with Statutory Rules and the respondent is bound to act as per Rules. Though the contention is attractive, this cannot be sustained as there can be no estoppel against the Statutory Rules. The issuance of such certificates NSC (VIII Issue) to a Company is not permitted. What is not permitted is barred. Therefore, the plea of estoppel cannot be sustained.

As the very issuance of the certificates is void the complainant cannot enforce the same even on a later date and even if the certificates are in the possession of the complainant it is not enforceable. These three points have to be answered in favour of the opposite party/respondent and against the appellants.

7. HOWEVER, it is to be noted that the respondent post office had the benefit of the funds either from 8.8.1995 or upto 15.11.1997 on which date a communication has been sent by the opposite party calling upon the complainant to surrender the certificates and receive back the actual amount. Therefore, it follows that the opposite party had the benefit of Rs. 14,500/- as on that date. Even if the complainant had invested the amount in a fixed deposit it would get a return of 11% interest on such investment for a period of 11 months. The post office had the benefit of the amount and it had taken nearly 14 months for it to realise the legal position and find out the apparent mistake committed by it. Therefore, it is just and necessary that the complainant should be paid an interest which he would have got if the amount had been invested in a fixed deposit with a Nationalised Bank. In the circumstances, this appeal is allowed in part and there is a direction to the opposite party/respondent to refund the sum of Rs. 14,500/- with interest at the rate of 11% p.a. respectively from the date of issue and till 30.11.1997. Such payment shall be made by the respondent post office on the surrender of original certificates issued in favour of the complainant. The appeal is allowed to the extent indicated above. Both parties shall bear their respective costs throughout. Appeal partly allowed.