(2015) 05 NCDRC CK 0116

In the National Consumer Disputes Redressal Commission

Case No : 2636 of 2012

KRISHAN KUMAR DUBEY APPELLANT

Vs

TRUSTLINE SECURITIES LTD. RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21(b), Section 2(i)(d) - Jurisdiction of the National Commission - Definitions

Citation : 2015 2 CPJ 672

Hon'ble Judges : V.B. Gupta, Suresh Chandra

Advocate : Vinod Kumar, Sumit Kalra

Judgement

1. Petitioner/Complainant has filed this petition under Section 21(b) of the Consumer Protection Act, 1986 (for short, ''Act'') challenging order dated 23.04.2012 passed by State Consumer Disputes Redressal Commission, UT, Chandigarh(for short, ''State Commission'') in (First Appeal No. 360 of 2011).

2. In brief case of the petitioner is that, on representations of Respondent No.2/ Opposite Party No.2, petitioner opened demat account for online trading with Respondent No.1/Opposite Party No.1 on 24.7.2010. It is stated that as per respondent no. 2, any of the transactions relating to purchase or sale of the shares were to be executed on petitioner''s specific instructions. Petitioner deposited Rs.1,05,000/- in order to earn his livelihood in the form of profit by way of online trading and he instructed respondents to specifically invest in the shares of Bajaj Financial Services and other than that, no transactions shall be done relating to the sale or purchase of the shares, without his instructions. Petitioner further averred that respondents agreed to install/provide trading software in his computer for carrying out the trading but the same was not installed despite his repeated requests. Rather respondents started trading in his account of their own without his consent, thereby causing financial loss to him. Respondents did not supply the statement of accounts, despite his requests. It is alleged that respondents started demanding Rs.60,271/-being debit balance.

Petitioner served legal notice dated 13.12.2010 upon the respondents but to no effect. Hence, consumer complaint was filed before the District Forum.

3. Respondent No.1 in its reply, denied therein all the allegations made in the complaint. It was stated that, respondent no.2 is no more their employee and had left the job way back in December, 2010. It was further stated that, petitioner signed the member client agreement with respondent no.1 and no terms and conditions of that agreement, contains any provision which states that any of the transaction relating to purchase or sale of the shares were to be executed on specification written instructions of the petitioner. It was denied, that petitioner had instructed it to invest only in shares of Bajaj Financial Services and other than no transaction shall be done relating to sale or purchase of the shares, without his specific instructions. It is further stated, that no request for installing the software was ever received by it. The petitioner suffered losses due to his erroneous trading decision. Now with an ulterior motive to recover those losses from respondent no.1, he filed a false and frivolous complaint. There has been no deficiency in service or unfair trade practice on its part. The complaint merit dismissal.

4. Respondent No. 2 did not appear despite due service. Therefore, he was proceeded exparte by the District Forum, vide order dated 30.3.2011.

5. District Consumer Disputes Redressal Forum-I, UT, Chandigarh (for short, ''District Forum'') vide order dated 17.11.2011, allowed the complaint. It directed the respondents to refund the sum of Rs.1,05,000/- to the petitioner and also directed them to pay compensation of Rs.25,000/-, apart from litigation cost of Rs.7,000/-.

6. Being aggrieved, only respondent no.1 filed appeal before the State Commission, which allowed the same vide impugned order.

7. Hence, this petition.

8. We have heard learned counsel for both parties and gone through the record.

9. It is submitted by learned counsel for the petitioner, that respondents ignored petitioner''s instructions and traded without the consent/instructions of the petitioner, in order to make unlawful enrichment at the expenses of the petitioner. Further, respondents also ignored the instructions of the petitioner for trading only in the shares of Bajaj Financial Services. Such an arbitrary and unilateral decision of the respondents in trading in the account of the petitioner, without his consent and specific instructions resulted in accrual of financial losses to the petitioner.

10. It is further submitted that illegal conduct of the respondents in ignoring the instructions of the petitioner is also borne out from the contradictory stand taken by respondent no.1 in the reply to the complaint placed on record before the District Forum. The respondent no.1, on the one hand, in para 4 of the reply pleaded that no specific instructions from the petitioner was required for online

trading in his account whereas, on the contrary, in para 5 of the reply, stand taken by the respondent no.1 was that all the trading were done on specific instructions of the petitioner. This itself proves the malafide intention of the respondents who resorted to illegal means in order to make unlawful gains at the expense of the petitioner.

11. On the other hand, it has been submitted by learned counsel for respondent no.1, that petitioner is not a consumer as he is indulging in online trading of the shares. In support, learned counsel has relied upon following judgments; (i) Sterlite Industries (India) Limited vs. Ganpati Finsec Private Limited,

(R.P. No.3345 of 2012), decided by this Commission on 12. 06.2013;

(ii) Steel City Securities Limited Represented by its Manager Vs. G.P. Ramesh and Anr,

(R.P. No.3060 of 2011), decided by this Commission on 3.2.2014;

(iii) Kotak Securities Limited and Ors. Vs. Bharatkumar Ranchhoddas Rana and Ors, (R.P.Nos.719-720/2012 & 918/2012), decided by this Commission on 08.01.2014;

(iv) Vijay Kumar Vs. Indusind Bank, (R.P.3986 of 2011) decided by this Commission on 15.02.2012;

(v) A. Assaitambi Vs. M/s Satyam Computer Services Ltd, (R.P.No.1179 of 2012), decided by this Commission on 01.08.2012 and

(vi) V. K. Agarwal (Dr.) Vs. Infosys Technologies Ltd. & Ors.

(O.P.No.287 of 2001) decided by this Commission on 24.07.2012.

12. The State Commission while allowing respondent no.1''s appeal in its impugned order observed; " 11. The authorization given by the complainant under the heading "Authority Letter for Order Instructions" Annexure I (page no.101 of District Forum file), reads as under; " I/We understand that you require written instructions for receiving/ modifying/ cancelling orders. However, since it is not practical to give written instructions for order, I hereby authorize you to kindly accept my/my authorized representatives'' verbal instructions/ orders in person or over phone and execute the same. I/We understand the risk associated with verbal orders and accept the same, and agree that I/we shall not be entitled to disown orders under the plea that same were not undermine/ our instructions.

Please treat this authorization as written ratification of my/our verbal directions/ authorizations given and carried out by you earlier. I/we agree to indemnify you and keep you indemnified against all losses, damages and actions which you may suffer or face as a consequence of adhering to and carrying out my/our directions given above.

From the perusal of the above extracted clause of the Member Client Agreement, it is evident that the complainant had authorized the opposite parties to accept his or his authorised representatives'' verbal instructions/orders in person or over phone and execute the same. He also appended his signatures, on the Authority Letter, in token of acceptance of the same. In pursuance of the said authorization, the Opposite party, had carried out various transactions of sale/ purchase of the shares and the statements of account were duly furnished to the complainant, from to time. However, the complainant never raised any objection, with regard to the validity/legality of those transactions. In our view, if the complainant, was dis-satisfied with any of the transactions, done by the Opposite Party, which, according to him, were without his consent, then he should have immediately approached it, by writing a letter, in this regard, to stop the transactions, and should have withdrawn the Authority Letter, but he did not do so. In the absence of any tangible evidence, to the contrary, the plea of the complainant, in this regard, cannot be accepted and the same is rejected. However, the District Forum by overlooking all these facts erroneously allowed the complaint, and, thus, the order impugned is liable to be set aside ."

13. Petitioner in its complaint itself has averred, that he in order to earn his livelihood in the form of profit is doing online trading in shares.

14. Thus, short question which arise for consideration in this case is, as to whether Petitioner is ''Consumer'' or not, as per Section 2 (i) (d) of the Act.

15. Expression ''consumer'' has been defined in Section 2 (1) (d) of the Act, which read as under; "d "Consumer" means any person who,---

I. buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or II. 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 than 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 with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation------ For the purpose of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment".

17. This Commission in Vijay Kumar Vs. Indusind Bank, II (2012) CPJ 181 (NC) has held; " Since, petitioner has been trading regularly in the shares which is a

commercial transaction and for which he has also availed the "over draft facility" from the respondent, as such he would not be a consumer as per Section 2 (1) (d) (ii) of the Act. Moreover, regular trading in the purchase and sale of the shares is a commercial transaction and the only motive is to earn profit. Thus, this activity is purely commercial one and is not covered under the Act ".

18. In the present case, petitioner has been doing online trading regularly in the share business and the same is purely a commercial activity. Hence, petitioner would not fall under the definition of ''Consumer'' as per the Act.

19. Even otherwise, as per the impugned order there is no deficiency on the part of respondent no.1. The respondent no. 1 as per ''Authority Letter for order/ instructions'' had carried out various transactions of sale/purchase of shares, as per the instructions of the petitioner and had furnished the statement of accounts to the petitioner However, petitioner never raised any objection in this regard. Hence, there is no deficiency of service on the part of respondent no.1. The State Commission, therefore rightly allowed the appeal. We find that there is no infirmity or ambiguity and illegality in the impugned order passed by the State Commission. Consequently, we dismiss the present petition.

20. No order as to cost.