(2013) 09 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Laxmi Narain Bora — APPELLANT

Vs

Post Master General And Ors. — RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : 2013 4 CPJ 101

Hon'ble Judges : Rekha Gupta J.

Final Decision : Petition dismissed

Judgement

1. REVISION Petition No. 1004 of 2008 has been filed against the judgment and order dated 5.2.2008 passed by the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jodhpur (''the State Commission''). The brief facts of the case as per the petitioner/complainant are that the petitioner resides at the above said address and he is a senior citizen of India. The main office of respondent No. 1/opposite party No. 1 is at Station Road, Jodhpur and is related with Central Government and work for post office and small saving schemes for his profit earning and the work of profit. It is sub -branch is at Juni Mandi, Jodhpur (respondent No. 2/opposite party No. 2), which is an authenticated branch respondent No. 1. Respondent No. 3 is an authorised agent of respondent Nos. 1 and 2 who is paid fixed commission on the amount of R.D. Account, by respondent Nos. 1 and 2.

2. RESPONDENT No. 3 had induced petitioner to open an R.D. Account by showing benefits of saving schemes and P.F. Due to it petitioner opened R.D. Account No. 1496044 through agent Kamla Joshi, CA 0773327 to collect small amount for future use. She is the daughter of petitioner also. Petitioner got information about interest rate on the opening of account and profit at the time of its maturing. The maturity date of petitioner''s account was 26.5.2004 according to Post Office Rule 10A and information collected from respondents about benefits at the time of maturity of account, petitioner has continued his account.

3. PETITIONER has deposited Rs. 30,000 advance according to Post Office Rule

8. Petitioner deposited in advance because there is provision of 4% rebate and to get rid of monthly visit at post office. 8 advance deposit: (1) in an account which has not become discontinued account under Rule 7, deposits for not less than six monthly instalments may be made in advance in any calendar month at the option of the depositor and rebate on such deposits shall be admissible as follows:

The petitioner has deposited complete amount through respondent No. 3 in the office of respondent Nos. 1 and 2, petitioner was giving above said amount on faith. Neither receipt of it was given to petitioner nor pass book was given to him. When petitioner did not receive the pass book he went personally and met respondent No. 2 but he neither gave satisfactory reply nor gave any information about his account nor gave pass book to him and misbehaved with him -and turned him out from the office and said that he should take pass book from the agent of respondent No. 3. Two letters were given to him personally hand to hand.

4. AFTER 15 -20 days petitioner sent his son to know whereabout of the passbook. Petitioner sent a letter with his son and asked for information about his account and his pass book. But respondent No. 2 has not given any information and avoiding it, he said that the entire record has been sent to the head office of respondent No. 1, you may go and collect information from him. Son of petitioner personally went to the office of respondent No. 1 and asked for information about his account and record and asked for post office rule but respondent No. 1 has not given any satisfactory reply about record and book of rules was not given to him. When petitioner could not get the pass book even after visiting the office of respondents so many times then petitioner became doubtful that respondents are deceiving him. Petitioner pressed hard to respondent No. 3 for passbook and receipts. Respondent No. 3 then gave him the pass book on 12.11.2005 and then petitioner came to know that she had withdrawn this amount on 29.10.2005 and Post Master has closed his account No. 496044.

5. RULE 9A. Premature Closure -The holder of an account may prematurely close the account after three years from the date of opening of the account provided that interest at the rate applicable from time -to -time to post office saving account shall be payable on such premature closure of account. However, no premature closure of account is permissible until the period for which the advanced deposits made under Rule 8 is over.

6. THE petitioner asked respondent No. 3 about that amount and she said that she was in need of money so she has withdrawn that amount. She received total amount of account in cash. That was taken on 28.10.2005. The total amount in account of petitioner was Rs. 3,18,027. About that money a seal of post office is placed by respondent No. 2 in pass book but post master has not signed. It is pertinent to mention here that respondents made payment of such a big amount of petitioner''s joint account to respondent No. 3 to give profit to respondent No.

3 while there is a provision to make payment of such a big amount by account payee cheque only. In their reply respondent Nos. 1 and 2/OP Nos. 1 and 2 have admitted that it was related to respondent No. 3. It is admitted that one R.D. account No. 496044 was opened by the petitioner with respondent No. 2 in joint ''B'' category with respondent No. 2 through respondent No. 3.

7. IT was admitted that the petitioner had deposited the amount of Rs. 30,000 only in the account on 15.9.2005 in accordance with the rules.

8. THE petitioner deposited the amount with respondent No. 2 through respondent No. 3 who is the daughter of the petitioner and is the authorized agent and the joint account holder. The petitioner has never made any personal transaction. The acknowledgement of the amount deposited was given duly entering into the R.D. Pass book to respondent No. 3 and the amount of the rebate was also paid in accordance with the rules. It was further averred that from this it would be evident that the case was not related to the post office and the petitioner, but was between the petitioner and respondent No. 3 who is the daughter of the petitioner. Respondent No. 3 who is the daughter of the petitioner was his authorized agent and joint account holder, who after getting deposited the amount of Rs. 30,000 on 15.9.2005 had kept the pass book with her. On being asked by the petitioner as to where was the pass book, the respondent No. 2 had told the petitioner that the pass book of the above account was with respondent No. 3, and that he may obtain the same from her. In this connection no indecent behaviour was conducted by the respondent.

9. THE submission of the respondent is that this is the case between the petitioner and the daughter of the petitioner, respondent No. 3 who is his agent and joint holder of the account in this it is admitted that respondent No. 3 the joint account holder of the above account has taken payment from respondent No. 2 of their said R.D. account on 28.10.2005.

10. THE matter is then between the petitioner and respondent No. 3 who is the daughter and the authorized agent and joint account holder. The payment of the above account was made by respondent No. 2 in accordance with the rules. The R.D. account No. 496044 was opened by the petitioner with respondent No. 2 in ''joint B'' category in the name of the petitioner and in the name of respondent No. 3, which has been accepted by the petitioner in his complaint and is also evident from Annexure (12) produced herein. In accordance with Rule 20(2) of Part 1 of Post Office Saving Bank Book transaction of the account of ''Joint B'' category can be made by either of the account holders, therefore, the payment made by respondent No. 2 to respondent No. 3 was made in compliance with the provisions of the above rule.

11. IT is admitted that the payment should have been made through cheque. But sometime, due to the cash being in more quantity and keeping in view the disbursement of the payment, the payment is made in cash. Therefore, with regard to payment made in cash of the above account, there was no collusion

between respondent No. 2 and respondent No. 3.

12. RESPONDENT No. 3/OP No. 3 has also filed a reply before the District Forum stating that petitioner and respondent No. 3 are father and daughter and respondent No. 3 having animosity with her husband was living with her father. Respondent No. 3 is also having a daughter named Shweta. Respondent No. 3 after being separated with her husband was living with her father and all her domestic goods, ornaments, etc., are also with her father. Respondent No. 3 is an LIC Insurance Agent since the year 1990 and is also the agent of the post office since 1994. The respondent No. 3 after getting savings from her income was depositing the amount in the post office and since she was having dispute with her husband was living with her father and she was having good relations with father had got opened the joint account with her father. But the amount which was got deposited in the above account was her own earned income. The petitioner does not have any relevancy with that amount. The petitioner was incensed with respondent No. 3, because respondent No. 3 has got performed the ''sagai'' ceremony of her daughter on her own wish, due to which the petitioner was not pleased and the ill -feeling developed between the petitioner and respondent No. 3 and, therefore, the petitioner had expelled respondent No. 3 from his house and had kept all her domestic goods, ornaments, etc., with him. Since respondent No. 3 had to perform the marriage of her daughter Shweta, she had withdrawn the amount from her account, which was her own earned money and performed the marriage of her daughter. Respondent No. 3 is an LIC Agent for a long period and is also an agent of post office and there has never been any complaint against her. Here it is worthwhile to mention that when the above account was got opened at that time the daughter of the respondent No. 3 was small, and therefore, respondent No. 3 had got opened the joint account with her father bona fide, which is now being taken illegal advantage by her father. The District Consumer Disputes Redressal Commission Jodhpur, Rajasthan (''the District Forum'') vide order dated 30.7.2007 while admitting that "the dispute concerned whether the amount deposited in that account was of complainant or of respondent No. 3 cannot be treated as a consumer dispute. The dispute relates to ownership of the movable properties, which "could have been raised before the Court competent". However, it came to the conclusion that "so far as respondent No. 3 is concerned, respondent No. 3 is duty bound towards respondent Nos. 1 and 2. Respondent Nos. 1 and 2 allowed respondent No. 3 for incorrect withdrawal for that respondent Nos. 1 and 2 are at liberty to recover the amount as per rules from respondent No. 3. It is clarified here that so far as the question of ownership of the amount deposited in R.D. account of the complainant is concerned of complainant or of respondent No. 3 is concerned, this point is not related to consumer dispute and as such we are not going to decide it. It was left open to the discretion of the respondent Nos. 1 and 2 as to whom to make the payment of Rs. 3,01,827 with interest deposited within 15 days in the R.D. account of the complainant. This amount will be deposited by respondent Nos. 1 and 2 in the account of the complainant. They

are also directed to act as per rules. If the complainant desires after depositing the amount by respondent Nos. 1 and 2 he can extend the date of maturity of his R.D. Account". The District Forum ordered as under

Therefore, the complaint of the complainant against respondent Nos. 1 and 2 is allowed and respondent Nos. 1 and 2 are found guilty for the deficiency in the service towards the complainant and it is ordered that respondent Nos. 1 and 2 shall deposit the complete amount of incorrect payment made by them to respondent No. 3 on 28.10.2005 from the R.D. account of the complainant with interest payable and information of such deposition of amount may be given to complainant. In addition to it, respondent Nos. 1 and 2 are directed to make the payment of sum of Rs. 10,000 as compensation towards the mental torture and sum of Rs. 1,500 towards the expenses of the complaint. Here, it is clarified that respondent Nos. 1 and 2 are at liberty to take appropriate action as per rules for recovery of the amount of Rs. 3,01,827 incorrectly paid to respondent No. 3. So far as question relating to the ownership of Rs. 3,01,827 deposited in the R.D. Account of the complainant is either to the complainant or to the respondent No. 3 is concerned is not the subject matter of the consumer dispute and that can be settled by the parties concerned before the Court competent.

13. AGGRIEVED by the order of the District Forum, two appeals were filed before the State Commission. Appeal No. 363 of 2007 was filed by respondent Nos. 1 and 2 and appeal No. 364 of 2007 was filed by respondent No. 3. The State Commission after hearing the arguments advanced by both the parties and perusing the records stated mat "it appears from the letter dated 12.4.2007 of the Government of India, Ministry of Communication that where the advance amount is deposited, the account cannot be closed prior to expiry of the extended period for which the account was extended. In the present matter, sum of Rs. 30,000 were deposited as a advance amount and, therefore, under the provisions of Rule 9A the account cannot be closed prior to the extended period for which the advance amount was deposited. The important question before this Commission is that whether the payment of amount from the account in this way can be stated as deficiency in service on part of the respondent Nos. 1 and 2. This matter is required to be considered from all the angles and aspects. This is undisputed fact that this joint account was opened by complainant and respondent No. 3 and in the event of maturity, any of them can withdraw the amount from the account. If the sum of Rs. 30,000 as an advance amount would not have been deposited men in that event any of the account holder could withdraw the amount deposited with interest from the account. If it is so also presumed that respondent Nos. 1 and 2 had no power to make the payment of premature account and if the sanction for withdrawal of the amount against the rule is accorded then in that circumstances, whether deficiency in service on part of respondent Nos. 1 and 2 can be presumed. Deficiency in service can only be presumed in that event when such deficiency caused any losses to the concerned parties. If this account is presumed to be an individual account and if the account holder happened to receive the amount against the rule from this individual

account then in that event whether such account holder is entitled for receiving any amount of compensation from the post office on the ground of deficiency in service and in our opinion the answer is negative. In the present matter, the account holder is beneficiary and not the post office. Under the provisions of Rule 9A account could not closed premature and if the account is closed in this way, the employees and officers of the post office can be held responsible but so far as question of deficiency in service is related for that complainant and respondent No. 3 can get no gains. If the amount would have been withdrawn by respondent No. 3 showing her circumstances then in that situation there would have been any litigation with regard to the amount in between the complainant and respondent No. 3 but stating the deficiency in service complainant cannot receive any benefit from respondent Nos. 1 and 2. After the expiry of the period of account, any account holder can withdraw his amount. The account was prohibited to be closed in case of deposition of the advance amount because the account -holder was given certain rebate on the amount deposited in advance. Respondent Nos. 1 and 2 stated that the recovery of the rebate given was made from the remaining amount. In our opinion, though the account cannot be closed before the expiry of the period for which the advance amount is deposited but if such an account is closed then also the person receiving the benefits was the account holder only. If any dispute relating to the ownership of the amount lies in between the complainant and respondent No. 3 then the same can be settled from the competent Court. In our opinion, in the present matter no deficiency in service by respondent Nos. 1 and 2 is caused to the complainant. The amount which could be withdrawn after its maturity by any of the account holder and which was paid before its maturity and in that circumstances there was no deficiency in service on part of respondent Nos. 1 and 2 towards the complainant account holder. For the reasons explained above, the conclusions made by the learned Forum are not reasonable and therefore, the order is liable to be set aside". Hence, the present revision petition.

14. THE main ground for the revision petition are that the learned State Commission has committed grave and serious error of law and fact to concluding that on account of premature closure of R.D. account, the beneficiary is the Depositor/Account Holder. This conclusion of the learned State Commission is not based on proper appreciation of the factual matrix of the case. Admittedly, the case of the appellant/complainant was of a joint account which was prematurely closed by one of its partner without the consent of the other partner, who was in fact depositor. Thus, the conclusions of the learned State Commission that on account of premature withdrawal of amount depositor/account holder is beneficiary and not post office, is wholly preposterous. The premature closure of R.D. account and withdrawal of amount by one of the partner of the joint account has obviously caused financial loss to the appellant/complainant. This vital aspect has been overlooked by the learned State Commission by accepting the appeals preferred by the respondents. Thus the impugned judgment of the learned State Commission is wholly perverse and therefore/the same is not all sustainable. We

have heard the learned Counsel for the petitioner and the respondent and have gone through the records. The main arguments of the Counsel for the petitioner were that respondent Nos. 1 and 2 in collusion with respondent No. 3 have withdrawn Rs. 3,01,827 from the joint account in violation of the rules and the payment was made in cash which was in violation of Income Tax Rules. Be that as it may, any violation of Income Tax Rules cannot be construed as deficiency in service qua petitioner.

15. IT is an undisputed fact that the R.D. account No. 1496004 in question was the joint account of the petitioner and respondent No. 3. Petitioner as per his own claim that he is a senior citizen and his daughter respondent No. 3 was living with him. The question whether the amount being deposited is of complainant and respondent No. 3, as rightly observed by the District Forum as well as the State Commission, cannot be treated as a consumer dispute.

16. AS per Rule 20(2) of Tart I of the Post Office Saving Bank Book transaction of the account of ''Joint B'' category can be made by either of the account holders and if so, respondent Nos. 1 and 2 cannot be held guilty of deficiency, if the payment was made to respondent No. 3 who was herself the joint account holder. Respondent Nos. 1 and 2 have also stated that as per Rules 10 and 11 of the Post Office Regulation (DG Posts Letter No. 47/15/75 SB dated 10.11.1975) the matured R.D. account can be run continuously for a period of next five years and at the time of need it can be closed at any time after receiving the payment and payment of this is to be made in accordance with the Notification No. 2 of the Post Office Saving Bank Regulation 119(1)(A)(B) in which the rebate given on the advance deposit is recovered and the account is closed. Petitioner has nowhere mentioned in the petition as to how respondent Nos. 1 and 2 by colluding with respondent No. 3 made payment to respondent No. 3 and gained thereof, as the petitioner admitted that the entire amount was collected by respondent No. 3, his daughter.

17. IN view of the above circumstances, we find that the Counsel for the petitioner has failed to establish that the State Commission has committed any grave and serious error in law and facts in construing the complaint of the petitioner and coming to the conclusion that if any dispute relating to the ownership of the amount lies between the complainant and respondent No. 3 then the same can be settled from the competent Court.

18. IN view of the foregoing reasons, we find that there is no jurisdictional error, illegality or infirmity in the order passed by the State Commission warranting our interference. The revision petition is hence, dismissed with liberty to the petitioner to approach any appropriate Forum with regard to the dispute between the petitioner and respondent No. 3. Before parting with, we must say that respondent Nos. 1 and 2, i.e., the Post Master General, Station Road, Jodhpur and Post Master, Sub -Post Office, Jodhpur had admitted in their reply that the payment should have been made through Cheque. But some time due to the cash being in more quantity and keeping in view the disbursement of the

payment, the payment was made in cash. While it is reiterated that this cannot be construed as deficiency in service qua the petitioner, the procedure being followed is in violation of the Income Tax Rules and cannot be ignored by us. Secretary, Department of Posts is directed to enquire into the matter and review all similar cases where such payments have been received or paid in violation of the Income Tax Act and fix the responsibility on all those persons who have deliberately violated the Income Tax Act to make payment or received amounts in cash and take necessary disciplinary action against the erring officials. Action taken in this regard be informed to this Commission by way of an affidavit within a period of three months from the date of order. List for compliance on 13th December, 2013.