(1999) 03 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

M.N.GOPALASWAMY APPELLANT

Vs

DIVISIONAL MANAGER, CONSUMER SERVICE SECTION RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Citation : 1999 2 CPJ 460 : 1999 2 CPR 337

Hon'ble Judges : N.D.V.Bhatt , B.H.Kamalamma , Abdul Perwads J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal, the short point for consideration is as to whether the finding of the District Forum that the opposite party (Canara Bank) is not guilty of deficiency in service can be found fault with.

2. IT is noticed that the complainant had approached the District Forum alleging deficiency in service on the part of the opposite party on the ground that opposite party had wrongly called upon him to pay an amount of Rs. 19,884/- as tax for the demand draft of U.S. $ 8,000/- required to be sent by the complainant towards his son''s studies abroad. In sum, the complainant took the stand that the demand draft referred to hereinabove did not attract the Foreign Exchange Conservation Tax (for short, ''FECT''). IT was the case of the complainant that on account of the demand made by the opposite party to pay the tax amount, he had to incur certain expenditure, though he did not pay the tax as such. On these grounds, in substance, he prayed for the compensation reflected in his complaint. The opposite party-Canara Bank took the stand that it did not levy any tax on the amount covered by the demand draft since, according to it also, the same did not attract the FECT on account of the fact that the same was being sent towards the studies abroad. However, it was required to write to the complainant at a later point of time (sic.) in view of the specific instructions by the Reserve Bank of India to collect the said tax. The opposite party also took a stand that the opposite party took up the matter with the Reserve Bank of India pleading that the tax was not liable to be paid by the complainant and, ultimately, the opposite party''s stand was vindicated when the Reserve Bank of

India exempted payment of tax by the complainant. The opposite party therefore, took the contention that there was no deficiency in service on its part.

The District Forum, on a consideration of the materials on record, took the view that there was no deficiency in service on the part of the opposite party. In the result, the complaint came to be dismissed. Hence the instant appeal.

3. WE have heard the appellant in person and the learned Counsel for the respondent. The main thrust of the submission made by Sri Gopalaswamy, the appellant in this case, is that after knowing fully well that the demand draft sent by the complainant to his son abroad did not attract FECT, the opposite party had ''committed a mistake in addressing the letter to the complainant calling upon him to pay the tax amount to the extent of Rs. 19,884/-. The appellant therefore, contended that the opposite party has clearly committed deficiency in service; the word "deficiency" being understood as defined in Section 2(1)(g) of the Consumer Protection Act.

4. ON the other hand, the learned Counsel appearing for the respondent supported the judgment of the District Forum. We have applied our mind to the submissions made at the bar. We have also carefully gone through the order passed by the District Forum. The District Forum has, in para No. 8 of its judgment, pointed out as to how the opposite party cannot be found fault with for having addressed the letter in question. The District Forum, in substance, has taken the view that the opposite party, in the facts and circumstances of the case, had no option but to address such a letter. At the same time, it is pointed out by the District Forum that the opposite party had done all that it could to (sic.) the Reserve Bank of India at different levels to convince that the complainant was not liable to pay the tax i.e. FECT. The whole plea is epitomised by the District Forum in paras 7 and 8 of its judgment. The discussion of the District Forum is there as it is. The District Forum has also pointed out, particularly, in the context of the ratio of the decision of the National Commission in The Federal Bank, Bistupur, Jamshedpur v. Shri Bijon Mishra, Managing Trustee, Consumer Guidance Society of Jamshedpur, in First Appeal No. 5 (Bihar) of 1988 decided on 18.5.1989, that if a Bank had no option but to do something under compelling circumstances or for reasons beyond control, the Bank cannot be found fault with. We hasten to add here that the facts in the said case and the facts of the case dealt with by the National Commission are slightly different. However, we find that the ultimate ratio laid down by the National Commission will apply mutatis mutandis to the facts to the instant case also. In our view, the District Forum has rightly placed its fingers on the decision of the National Commission. In the instant case, as pointed out earlier, though the Canara Bank on the one hand was required to comply with the direction of the Reserve Bank, the Bank was also required to protect the interest of the customer on the other. We should observe that the Canara Bank in the instant case has performed its'' dual duty cast upon it with great anxiety and care and ultimately has succeeded in getting the exemption to its customer. May be that the customer, viz., the

complainant had to incur certain expenditure on account of conspiracy of circumstances. However, on that count the opposite party cannot be said to have committed any deficiency in service. Further, the complainant has not made any grievance against the Reserve Bank of India, at whose instance the Canara Bank had to address a letter to him, which is the cause of action for the complainant for filing his complaint. Further, the complainant has also not paid the tax in response to the letter of the Canara Bank. In all the circumstances are taken into consideration, we are indeed of the view that the opposite party-Canara Bank cannot be accused of having committed any deficiency in service. For the reasons stated hereinabove, we do not find any merit in this appeal, which is preferred by the complainant. The appeal is liable to be dismissed.

5. IN the result, the appeal is hereby dismissed. We make not order as to costs in this appeal. Appeal dismissed.

