(2013) 08 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

M/S Akash Ganga Airlines Ltd APPELLANT

Vs

Aryavrat Gramin Bank RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 566 : 2013 3 CPJ 695

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : SHASHI KUMAR SINHA , NIKHIL JAIN

Judgement

1. M /s Akash Ganga Airlines Limited has filed instant complaint under section 21 (a) of the Consumer Protection Act, 1986 (in short, ''the Act '') against Aryavrat Gramin Bank, Nirala Nagar, Lucknow claiming deficiency in service on the part of the opposite party bank in connection with the loan sanctioned in favour of the complainant for setting up a domestic airline.

2. AS per the allegations in the complaint , it is clear that services of the opposite party bank was availed by the complainant in relation to a commercial purpose i.e. setting up a domestic airlines for earning profit. Therefore, the complainant was given an opportunity to make submissions on maintainability of the consumer complaint. Learned Shri Shashi Kumar Sinha, Advocate for the complainant has drawn our attention to the definition of complaint as provided in section 2 (c) (iii) and submitted that the complaint means any allegation in writing made by the complainant relating to a case where the services hired or availed of suffers from deficiency in service. He, further, contended that as per the section 2 (O) of the Act, "service " means service of any description made available to the user and it includes the facilities in connection with banking / financing etc. Learned counsel for the complainant submits that as per the allegations in the complaint, the opposite party had agreed to advance loan to the complainant for setting up a domestic airlines. As such the aforesaid service falls within the definition of "service " as envisaged under the Act. Learned counsel thus submitted that allegations in the complaint clearly indicate deficiency in service on the part of the opposite party in relation to the loan

account of the complainant. As such the consumer complaint is maintainable.

3. IN support of this contention, learned counsel for the complainant has relied upon the judgements of the Supreme Court in the matters of Lucknow Development Authority Vs. M.K.Gupta JT 1993 (6) SC 307 and Civil Appeal No.1064 of 2013 titled Vijaya Bank Vs. Gurnam Singh, CCI Chambers Co-op Housing Society Vs. D.C.Bank Ltd. AIR 2004 SC 184.

4. WE have considered the submissions made on behalf of the petitioner and carefully gone through the allegations in the complaint. There is no dispute with the proposition raised by the complainant that the loan account facility given by a bank to its customer falls with the definition of "service " as envisaged under section 2 (O) of the Act. It cannot be disputed that in terms of section 2 (c) (iii) a complaint can be filed by aggrieved party in relation to deficiency of service by the service provider. However, in our considered view in order to successfully maintain a complaint under the Act, the complainant must qualify to be a complainant as defined under section 2 (b) of the Act. The term complainant as defined under section 2 (b) of the Act is reproduced thus: "Complainant " means (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or (iii) the Central Government or any State Government; or (iv) One or more consumers, where there are numerous consumers having the same interest;] (v) in case of death of a consumer, his legal heir or representative;] who or which makes a complaint '' ''.

On reading of the above for an individual to maintain consumer complaint under the Act, he has to be a consumer. The term ''consumer '' has been defined under section 2 (1) (d) of the Act. The relevant portion of the definition which deals with hiring or availing of service is reproduced thus: "Consumer means a person who- (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 brought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment ".

5. ON reading of this provision, it is evident that after the amendment of the definition of consumer by the Act 62 of 2002, the persons availing services for any commercial purpose are excluded from the definition of "consumer ". In the instant case, admittedly the loan facility was availed by the complainant for a commercial purpose i.e. to set up a domestic airline. No doubt the explanation to section 2 (1) (d) (ii) provides that commercial purpose does not include the

services availed by a person exclusively for the purpose of earning his livelihood by means of self employment. Unfortunately, this is not a case before us. Complainant admittedly is a public limited company and unnatural person. Therefore, it cannot take advantage of the explanation to Section 2 (1) (d) (ii).

6. WE have gone through the judgments referred to by learned counsel for the complainant. In our view, the aforesaid judgments are based upon their distinct facts and are not applicable to the facts of the case. Further, the aforesaid judgments relate to the period prior to amendment of definition of "consumer " when the persons availing services hired for commercial purpose were not excluded from the definition of consumer. Thus, in our view the aforesaid judgments are of no avail to the complainant. Learned counsel for the complainant has also contended that in view of the judgment of the Supreme Court in the matter of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation AIR 1993 SC 935, it is obligation of the bank to reschedule the payment of loan by the complainant and also sanction further loan to make the complainant company viable. In our considered view, aforesaid judgment has been passed in a different context while interpreting the scope of section 29 of the State Financial Corporation Act and it has no applicability to the facts of the case.

7. THE result of the above discussion is that the complainant does not fall within the definition of the complainant as envisaged under section 2 (d) (ii). As such, he cannot maintain a consumer complaint under the provisions of the Act. The complaint is, therefore, dismissed as not maintainable. No order as to costs.