(2013) 08 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

M/s. Sahara India Commercial Corporation Ltd. Through its Sector Manager and The Manager, Sahara India — APPELLANT

Vs

Smt. Rasal Devi Meghwanshi and Dhanraj — RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : 2013 4 CPJ 467

Hon'ble Judges : Rekha Gupta J.

Judgement

1. THE revision petition No. 3209 of 2008 has been filed against the final judgment and order dated 07.05.2008 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (''the State Commission'') in First Appeal No. 115 of 2008. The brief facts of the case as given by the respondents/complainants are as follows: Shri Ram Pal Meghwanshi husband of respondent No. 1 had purchased a bond of Rs. 1,000/ - on 29.09.1998 under the scheme S - 10 issued by the petitioner whose maturity date was of 10 years. The receipt of bond serial No. 38450038220. At the time of purchase of the bond Shri R.P. Meghwanshi has nominated the respondents as nominees.

2. RESPONDENT No. 1 is a widow who is making rounds to the petitioner company to receive the amount but no attention was paid to her. From time to time the employees of the office of petitioner No. 2 had been giving her assurance. According to the instructions of the company the respondents opened a joint account in the Arawali Kshetriya Gramin Bank branch Uniyara Khurd Teshil Toda Rai Singh whose account number is 2825. The petitioners/opposite parties have only deposited an amount of Rs. 1,000/ - in the said account, whereas the company should have made the payment of whole amount. In spite of many rounds and requests of respondent No. 1 the petitioner company has not made the payment to the respondent whereof the respondents are facing several types of hardships.

3. ACCORDING to S - 10, petitioner had to pay a sum of Rs. 1,000/ - per month up to 120 months according to the rules of the company after the death of bond

holder or one -time cash payment. The petitioner company has however paid only one installment to the respondents. When the respondent visited the office of the petitioner No. 2 she was told that the amount would come in her account altogether.

4. PETITIONER No. 2/opposite party No. 2 on behalf of the petitioners in their reply has stated that the condition to pay the amount is correct but respondent was never given an assurance to receive the amount in future because under the said scheme the prescribed age limit has been prescribed below 60 years. The respondents cannot get the benefit of the said scheme because the deceased was above 60 years old. The information has been given to the respondents in this regard. As per condition No. 5 A of the bond which was purchased by the husband of the respondent No. 1 the successors of the deceased can get the benefit only if the age of the deceased is within 16 to 60 years at the time of death.

5. ON receipt of the said application, the investigator according to the rules of the company, having investigated presented an enquiry report on the basis of the same the age of the deceased is different in the ration card and in the voter list. In voter list 2005 the age of the deceased is 66 years. On the basis of photo identity card 1995 the age of the deceased is 64 years. On the other hand for getting the benefit of the said scheme, after the death of Ram Pal, on 01.11.2005 the applicants got furnished a certificate from the Sarpanch of village Panchayat head on which the application has been presented. This cannot be a ground, because after the death of the deceased the certificate has been caused to be prepared from Panchayat to get the benefit of this scheme. It has not been mentioned as to which document was available in the panchayat for them to verify and certify his age. On the basis of the same the complainants cannot get any help and as such the complainants are not entitled to receive the benefit of this scheme.

6. AS per the Sahara 10 Scheme, on the death of bond holder for the rehabilitation of the family of bond holder the aid/grant is given to the nominees/ successors nominated by the bond holder. It is necessary to comply the following conditions of the scheme in regard to get the said aid/grant: (a) The death of bond holder should occur after 12 months (365 days) from the date of purchase of the bond and before the completion of this period.

(b) At the time of the death the age of the bond holder should be between 16 to 60 years.

(c) The bond holder must not be suffering from any fatal/incurable disease continuously within three years before the purchase of the bond. To receive the aid/grant after the death certified and reliable documents shall be presented by the nominated nominees in this regard. The birth certificate and certificate relating to the death of the bond holder shall be presented for the satisfaction of the company.

(d) The death of the bond holder not be caused by suicide or by the capital punishment awarded by the court.

(e) The death of the bond holder not be cause due to communal riots or war.

The nature of the facility given after the death shall be interest free loan according to the rules and conditions of the said scheme whose payment is to be made by the nominee in 20 years and the nominee can get the said aid/grant by giving his personal bond and according to the conditions of section VI.

7. THE District Consumer Disputes Redressal Forum, Tonk, Rajasthan (''the District Forum'') vide order dated 28.11.2007 after hearing the counsel and going through the records have observed as under: In these circumstances it was most important fact whether the death of the deceased occurred before 60 years or not and on this issue the documents which opposite party filed on the basis of the same and the certificate presented by the complainant it cannot be decided whether the death of the deceased occurred before the completion of 60 years. Hence, it is not justifiable to cause to give any relief to the complainant. If the complainant desires, he can initiate proceedings in the civil Court. Hence, the District Forum directed that the complaint filed on behalf of the complainant is rejected against the opposite party. Considering the circumstances, the parties shall bear the cost of the complaint.

8. AGGRIEVED by the order of the District Forum, the respondents filed an appeal before the State Commission. The State Commission has observed as under: In this connection, we perused the investigation report submitted by the opposite party/respondents and found that while giving report on the above mentioned fact in the investigation report, the investigator has admitted:

The respected account holder was illiterate and would do agriculture. According to the birth certificate issued by the office of Gram Panchayat, Datob, his date of birth is 10.07.1947 and the same was found correct on confirming from Gram Panchayat and on the basis of the same his age is 57 years 5 months and 13 days.

Similarly in the same investigation report, it has been stated:

According to family ration card of 2001 his age is 53 years according to which on the dated 23.12.2004 of death, the age of account holder is about 56 years.

In the same investigation report, it has been admitted that:

On interrogation to neighbourhood and villagers it has been told by them that at the time of death his age was about 60 years.

In our opinion in such circumstances even on the basis of this investigation report, the date of birth mentioned by the complainants is confirmed.

Definitely the investigator on behalf of respondents has given details of over age as given in voter ID card in regard to the age of bond holder. But considering this fact that bond holder was illiterate, then this controversy loses its importance particularly when investigator would tell the age of insured below 60 years by other investigations.

In this regard when on behalf of Shri Ram Pal Meghwanshi a sum of Rs. 1,000/ - was made deposited with Sahara India Pariwar for the purchase of bond at that time no dispute regarding the age of the bond holder was not raised by the respondents and in such circumstances, in my opinion it is not reasonable to raise dispute regarding age after his death. The District Forum has not considered the above mentioned facts due to which the order passed by them cannot be regarded in accordance with law. In my opinion the appeal of the appellants is liable to be allowed. Hence, the appeal of the appellants is allowed. The order in question dated 28.11.2007 is set aside and the complaint of the complainants is allowed thus, that the opposite party/respondents shall pay Rs. 1,000/ - monthly to the appellants/complainants from the death date 23.04.2004 till next 10 years on the basis of the face value of the bond purchased by the deceased. In addition to that the opposite party shall pay a sum of Rs. 1,000/ - to the complainants as complaint expenses within two months from the date of this judgment.

Hence, the present revision petition.

9. THE main grounds for the revision petition are that: • it is settled proposition of law that the consumer courts do not have the jurisdiction to adjudicate complicated questions of fact. In the present case there is bonafide dispute regarding the age of the deceased at the time of his death. There being a bonafide dispute regarding the age of the deceased at the time of his death, the appropriate remedy for the respondents was to approach the Civil Court to redress their grievances. The Consumer Forum, Tonk rightly addressed their grievances by given them the right to approach the civil courts. However, the State Commission erred in reversing the judgment of the Consumer Forum, Tonk vide the judgment which is impugned herein.

• The learned courts below have interpreted the scheme to mean that the nominees of the deceased would be entitled to the amount as a grant which need not be repaid. This however, was neither the intent of the scheme nor the mandate of the agreement between the parties. In fact, in another matter, where the State Commission, Orissa passed a similar order directing the death help to be paid in the forum of a grant, this National Commission was pleased to stay the operation of the impugned orders of the State Commission vide orders dated 27.09.2007 in revision petition No. 3181 of 2007.

• in view of the above said orders passed by this Hon''ble Commission, since the present matter also involves the same question of law, it would be expedient and in the interest of justice to pass similar orders in the present petition as well.

• The treatment of death help as a grant or an insurance policy is neither sustainable on facts of the case nor was it the intent of the scheme floated by the petitioner. In fact, the said scheme was only to provide an interest free loan to the respondents against furnishing personal guarantee and the presumption of the Hon''ble State Commission that the same was a grant in aid to the nominees of the deceased bond holder is thus liable to be set aside.

10. WE have heard the learned counsel for the petitioner and the respondent and have gone through the records of the case. It is an undisputed fact that the petitioner Shri Ram Pal Meghwanshi in his application form No. 208 dated 29.09.1998 had declared his age as 51 years. He had also not given his date of birth certificate to support the same. The petitioner had not raised any objection at that point of time and allowed him to purchase the bond. In fact they never raised the issue regarding date of birth till after the death of the Shri Ram Pal Meghwanshi, and the respondents who are nominated by him, claimed the due amount of death help as per clause 10 of the bond. We agree with the State Commission that it is not reasonable and fair to raise the dispute regarding the age after the death of the bond holder. In view of the above circumstances, we find that there is no jurisdictional error or illegality in the order of the State Commission warranting our interference. However, a partial modification is made to the extent that as agreed to by the counsel for the respondents/complainants the amount of loan that is paid by the petitioner will be repaid within a period of 20 years as per the terms and conditions of the bond.