(2004) 12 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

PATNI CO-OPERATIVE BANK LIMITED — APPELLANT

Vs

MITESH V. GANDHI — RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Citation : 2005 1 CPJ 617

Hon'ble Judges : M.S.Parikh , Leenaben P.Desai J.

Final Decision : Appeal disposed of

Judgement

1. -BY way of this appeal, the original opponent Bank has brought under challenge order dated 16.7.2003 rendered by the learned Consumer Disputes Redressal Forum, Vadodara in Consumer Complaint No. 368 of 2003 directing the opponent society to pay to the complainants the deposit amounts of Rs. 3,026/-, Rs. 3,792/-, Rs. 12,333/- and Rs. 10,741/- with interest @ 6.5% from 7.3.2003, 27.1.2003, 19.2.2003 and 27.1.2003 respectively and to pay cost quantified at Rs. 750/-.

2. WHEN this appeal came up for hearing, no one has remained present for the original complainant. We have heard the learned Advocate for the opponent Bank. Insofar as merits of the matter are concerned, it could hardly be disputed on behalf of the opponent Bank that fixed deposits of the complainants matured for payment and the opponent Bank was liable to pay the respective amounts of the fixed deposits with stipulated interest and by not making payment thereof it displayed deficiency in service. However, the learned Advocate for the opponent Bank made following submissions. (1) In the first place by communication dated October 23, 2002, the Reserve Bank of India issued directives under Section 35A of the Banking Regulation Act, 1947 read with Section 56 of the Banking Regulation Act, 1949 to the effect that the opponent Co-operative Bank was prohibited from making payment except in accordance with the directive annexed with the communication. The directive so annexed with the communication indicates that no amount exceeding Rs. 500/- could be permitted to be paid or withdrawn by depositor or creditor. In that view of the matter, compliance of

impugned order passed by the learned Forum will not be possible except with the leave of the Reserve Bank of India. In view of the settled legal position the directive issued by the Reserve Bank of India will have statutory colour. The only directive that can be issued would be to direct the complainant to obtain leave from the Reserve Bank of India for getting payment as per the order passed by the learned Forum.

(2) During the pendency of this appeal, the learned Advocate for the opponent Bank has brought to the notice of this Commission further development in the matter. Reserve Bank of India has, by its communication dated 27.7.2004 cancelled the licence of opponent Co-operative Bank to carry on Banking business in India by virtue of provisions contained in Section 22 of Banking Regulation Act, 1949 (AACS) read with Section 49A thereof. It has also been brought to the notice of this Commission that Registrar of Co-operative Societies, Government of Gujarat has issued order bearing No. NSB/FDCH/Z 7/2 dated 2.8.2004 taking the opponent Co-operative Bank into liquidation and making appointment of one Mr. I.P. Joshi as Liquidator under Section 108 of the Gujarat Co-operative Societies Act, 1961. It would, therefore, appear that the Liquidator has taken over charge of the opponent Co-operative Bank for the purpose of its winding up. Powers of Liquidator are contained in Section 110 of the said Act. It is obvious that by virtue of the order passed by the Reserve Bank of India as stated above, even the Liquidator will not be able to carry on business of the Bank in exercise of any of the powers under Section 110 of the Act. However, he will be required to exercise his power for the purpose of winding up more particularly for the purpose of distribution of the proceeds of the assets ratably among the creditors including the depositors as prescribed under Sections 110E, 111 read with Section 115 of the Co-operative Societies Act and Government order dated 5.3.1993.

The effect of the aforesaid development with regard to the opponent Co-operative Bank would be on the execution of the order passed by the learned Forum and confirmed by this order. Stated precisely, the effect would be to direct the Liquidator of the opponent Co-operative Bank to consider the complainant''s case as per the order passed by the learned Forum and confirmed by this Commission for payment as per the aforesaid provisions.

Bearing in mind the facts and circumstances of the case, following order is passed. ORDER Impugned order dated 16.7.2003 rendered by the learned Consumer Disputes Redressal Forum, Vadodara in Consumer Complaint No. 368 of 2003 is hereby confirmed with a rider that the Liquidator of the opponent Co-operative Bank will consider the claim of the complainants as per order passed by the learned Forum and confirmed by this Commission for effecting payment, if any, from the available proceeds in his hands in accordance with law. 2. This appeal shall stand accordingly disposed of, with no order as to costs. Appeal disposed of.

