(1996) 10 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

P.D.DALMIA APPELLANT

Vs

BRANCH MANAGER, VIJAYA BANK RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Citation : 1996 3 CPJ 490 : 1997 1 CPC 536 : 1997 1 CPR 415

Hon'ble Judges : A.K.Bhattacharyya , Sunil Kanti Kar , S.Dutta J.

Final Decision : Appeal allowed/Appeal dismissed

Judgement

1. THE complainant is hirer of a Safe Deposit Vault at Vijaya Bank, Siliguri.

2. THE case of the complainant is that the locker rent was raised from Rs. 75/- to Rs. 200/- with effect from 18.5.91 without any prior notice to the complainant/ appellant and no improvement in Banking service has been noticed. It is also the case of the complainant/appellant that the locker charges in other banks has all along been much below Rs.200/-.It is the prayer of the complainant that the opposite party be directed to realise yearly locker rent at Rs. 75/- and also to improve banking service for the customer. THE complainant had also prayed for adequate compensation for mental agony. The case of the opposite party is that the complaint/petition is not maintainable and that the rent charged for the locker has been raised from Rs. 75/- to Rs. 200/- in accordance with the circular issued by the Head Office of the bank, on the basis of decision taken by the Board of Management and said enhancement in rental charges for locker are applicable to all branches of the bank throughout India.

It is further the case of the opposite party/respondent that as per circular issued by the management, service department in the Head Office at Bangalore,'' the locker rent has been enhanced from Rs. 75/- to Rs. 200/- effective from 1.4.91. The opposite party /respondent submits that it has nothing to do with the matter relating to the enhancement of the locker rent. The opposite party/respondent in the aforesaid backgrounds prayed for dismissal of the complaint/petition.

3. THE learned District Forum, Siliguri on the basis of definition of "complaint" as

given out in Sub-clause (I) to (III) of Section 2(1)(c) has been pleased to hold that the complaint/petition is not maintainable. We are unable to accept the said observation of the learned District Forum, Siliguri on the ground that without looking to the definition of "deficiency" as defined under Section 2(1)(g) of C.P. Act, the learned District Forum, Siliguri has come to the said decision that the complaint/ petition is not maintainable. The word "deficiency" as defined in the C.P. Act, 1986 means "any fault imperfection, shortcoming or adequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service." Undoubtedly the banking service in relation to its customer is rendered for consideration and in the instant case, the payment of locker rent is the consideration for hiring banking service and any fault imperfection, shortcomings or inadequacy in the quality, nature and manner of performance gives right to a bank customer to agitate its grievances before the Consumer Disputes Redressal Forum. Now question falls before us if the enhancement of banking charges for hiring the locker is appropriate or suffers from fault, imperfection or shortcomings or inadequacy in the quality, nature and manner of performance which is required to be maintained by the Bank.

4. IN the instant case, the abrupt enhancement of locker rent from Rs. 75/- to Rs. 200/- is definitely shortcoming in the manner of performance on the part of the respondent/ bank, particularly compared with the prevalent rate of locker rent for the similar type of locker. When the other Nationalised banks being similarly circumstanced charge lower rate for the similar type of locker, the respondent/bank cannot charge higher rate being similarly situated with the other banks for its banking services. The decision cited by the complainant/ appellant in the case of Akhil Bharatiya Gahak Panchyat v. Ahemadabad Electricity Co. Ltd. reported in I (1992) CPJ 32 (NC), it is held by the National Commission that a levy of motor rent of Rs. 2/- per mansem charged by the Ahemadabad Electricity Co. Ltd. whereas the Gujarat State Electricity Board levied Rs. 3.50 as motor rent per mansem, the charge of levy by the Ahemadabad Electricity Co. Ltd. could not be said to the unjustified. In the present case, the levy of locker rent enhanced from Rs. 75/- to Rs. 200/- is unjustified where the other bank charges at lower rate for the similar type of locker, the said decision is quite applicable in the present case, in view of such discriminating levy of the locker rent imposed by the respondent/bank. Similarly, the case of Arabinda Bhai Chunilal Davi v. Divisional Controller, Gujarat State Road Transport Corporation, reported in III (1993) CPJ 1608, the Gujrat State Commission held the same view and redressed the grievances of the consumer for such discriminating imposition of bus fare.

5. WE, therefore hold that there is a shortcoming or imperfection in the manner of performance in rendering service to the consumer by the respondent/bank and the levy of locker rent increased from Rs. 75/- to Rs. 200/- is arbitrary and unjustified.

6. WE award that the respondent/bank should charge Rs. 75/- per annum as locker rent from the complainant/appellant and the increased in the locker rent is allowed to the extent what is charged by the other Nationalised banks for similar type of locker and in similar circumstances and credit in favour of the complainant/ appellant the amount which has been realised in excess of admitted rent. Thus the appeal is allowed on contest setting aside the order dated 6.10.94 in Consumer Case No. 27 of 1991 passed by the District Forum, Siliguri.

In default to comply this order the same could be executed through District Forum, Siliguri.

7. WE do not award any compensation to the complainant/appellant considering the facts and circumstances of this case. The parties will bear their respective costs. Mr. Justice Amal Kanti Bhattacharji, President-The only short point raised in this appeal is whether a steep increase in the banking charge for hiring a locker from a bank constitutes any deficiency in service. In this case the appellant/ complainant brought a complaint against the respondent-Vijaya Bank alleging that the locker rent was raised by the bank from Rs. 75/- to Rs. 200/- without any prior notice to the hirer of the locker and that such a rise of the rent was a deficiency in service rendered by the bank in this respect. The bank which contested the case as the opposite party contended that the rent was increased on the basis of a direction from the head office and that it had no hand in the matter. The bank had also contended that increase in rent by the bank was actually not a consumer dispute and was not justiciable by the Consumer Court. The learned Counsel Redressal Forum, Darjeeling Camp at Siliguri examined the question carefully and on a consideration of the legal provisions and the decisions of the National Forum held that the allegation made by the complainant was actually not a ''complaint'' within the meaning of the Consumer Protection Act, 1986 (hereinafter referred to as Act) and hence the complaint was not maintainable before the Forum. It accordingly dismissed the case.

8. MY learned Brother Dr. Sunil Kanti Kar, however, has taken a different view in the matter and has on an analysis of the definition of deficiency as provided in the Act held that action of the bank in increasing the rent was a deficiency. He has accordingly suggested that the bank should charge the old rate as locker rent from the complainant/appellant to the extent what is charged by other Nationalised Banks for similar type of locker and in similar circumstances and credit the excess rent so far realised in favour of the appellant. The point for determination is if the increase in rent of the locker constitutes a deficiency in service under the provisions of the Act. Undoubtedly the service rendered by the bank on the basis of the charge realised from the customer for hiring a locker is a service within the meaning of Section 2(1)(o) of the Act. As stated above deficiency has been defined in the Act as meaning any fault, imperfection, short coming or inadequacy in the quality, quantity and manner of performance which is required to be maintained by or under any law or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any

service. Here obviously there is no statutory requirement regarding the fixation of the rate of rent for a locker by any bank. The rent is actually fixed by the bank which is accepted by a consumer by virtue of the contract entered into between them. There is no statutory provision regarding the term so such contract and as such each bank is entitled to enter into the contract according to its policy of management. Generally such contract is entered into for a particular period. When contract is renewed, it is on the basis of the terms fixed in the renewed contract. There is no binding that the terms of the renewed contract would remain the same. Hence any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance could be considered after a contract is executed between the parties. After a particular contract is concluded between the parties, the same must be performed free from deficiency. Judged from this angle, it cannot be said that the terms of a fresh contract can be attributed to those of a former one for examining the fault, imperfection etc. in the quality, nature and manner of performance of the contract. Hence from purely a legalistic point of view a renewed contract cannot contribute to the deficiency of an old contract. We, however, agree that a sudden increase in rent for the performance of any contract without adding to the quality of service is a matter which vitally affects the consumers who are forced to accept the service on the basis of an increased rent. Thus, if a company accepts the responsibility for repairing any instrument on the basis of an annual charge, the service quality can be assessed only during the period of continuance of the contract. So if the contract is annual, and increase of the charge for a subsequent year cannot resisted under the Act. Moreover, fixation of fare, rent or service charges depend on factors which cannot be bound by the contracts of the parties. The different State Commissions and the National Commission have thus consistently held that the Fora and the State Commissions are not entitled to fix the price or rent of anything which is the subject-matter of any service. Thus an increase in train fare or bus fare without a corresponding provision for better comfort or service cannot be control led by the Fora or the Commissions although undoubtedly it affects the consumer. In 1993 (1) CPR 119 (NC). it has been held that the direction of the Forum and State Commission to fix the price of plot as prevailing on the basis of N.I.T. is without jurisdiction and illegal. In I (1991) CPJ 641 the Karnataka State Commission has held that fixation of fare rates is a matter to be decided by the State Transport Authority subject to the rules made by the Commission under Section 67of the M.V. Act and that the correctness of fare or otherwise cannot be questioned under the Consumer Protection Act. Similarly, in II (1992) CPJ 507 (NC), it has been held that the question of reasonableness of passenger tariff cannot be decided under the Consumer Protection Act. On similar principles it has been held by the National Commission in I (1994) CPJ 198 (NC) that the State Commission-had acted illegally and without jurisdiction in issuing a direction to the Sales Tax Authorities prohibited them from realising from the dealers of liquid petroleum gas cylinders and an amount of 0.24 paise per cylinder as sales tax with effect from the impugned order.

9. THE order proposed by Dr. Kar is also not free from difficulty. It has been proposed that the appellate-bank should charge locker rent equal to that which other Nationalised Banks for similar type of locker and in similar circumstances realise. If other Nationalised Banks increase their rents in this respect, the efficacy of he proposed order is lost.

10. THE question has been elaborately dealt with in the judgment of the District Forum in this case and I think that there is no reason to interfere with the order. THE appeal should, therefore, be dismissed without any costs. Appeal allowed/ Appeal dismissed.

