(1993) 12 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

RAM LAL WADHWA APPELLANT

Vs

BANK OF BARODA RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Citation : 1994 1 CPR 499 : 1994 2 CPJ 618 : 1994 3 CPR 171

Hon'ble Judges : S.S.Dewan , R.L.Gupta J.

Final Decision : Complaints partly allowed

Judgement

1. THE complaint cases Nos.20, 25, 26 and 27 of 1992 though preferred by different complainants, are all directed against the same opposite parties. THE salient background herein is closely intertwined and the merits raise common issues of law and facts. THE evidence in all the cases is also common on the record. THE parties are represented by the same set of Counsel. It is not only apt but indeed necessary that all the four complaints be dealt with together. THE learned Counsel are agreed that these may be disposed of by a common order.

2. THE representative facts may be taken from complaint No. 209/1992 ''Ram Lai Wadhwa v. Bank of Baroda, Bombay and Others''. THE case of the complainant is that the opposite party-5 M/s. Lan Eseda Software Systems Limited, Hyderabad had floated a public issue of equity shares through opposite party-4 Consolidated Share Services Private Limited, Bombay and the latter appointed opposite party-2-Bank of Baroda, Clock Tower Branch, Ludhiana (for short ''the Ludhiana Bank'') for collection of share application money from the applicants on its behalf. It is alleged that in response to the said public issue of equity shares floated by opposite party-4, the complainant had applied for 200 shares on 29.4.1991 through the Ludhiana Bank and also submitted a cheque bearing No. 815445 dated 29.4.1991 drawn on Punjab National Bank, Sarabha Nagar, Ludhiana. THE grievance of the complainant is that despite having deposited the application money of Rs. 1,000/- within time, opposite party-4 did not allot 200 shares, to him. It is his case that when he protested the opposite parties for not allotting the shares to him, opposite party-4, vide its letter dated 25.9.1991

(Annexure P1), intimated him in the following terms : - "We acknowledge receipt of your letter dated 15.4.91 regarding non-receipt of other share certificate or Refund Order. In reply we would like to inform you that as per the final certificate of collection received from Bank of Baroda, Bombay main Controlling Branch. Ludhiana''s collection is shown as ''Nil'' (copy of certificate is enclosed herewith). Under the circumstances, we have processed the allotment of shares keeping Ludhiana aside. You are therefore requested to take up the matter with Bank of Baroda, Ludhiana."

According to the complainant, the situation, as reflected in the said letter, was found to be incorrect as he had applied for 200 shares through the Ludhiana Bank and the application money was duly received by it on 29.4.1991 and that in spite of forwarding his application money to opposite party-4 for the allotment of shares, the Bank sent him a cheque for Rs. 1,095/- towards the refund of his application money, along with interest at the rate of 15% p.a. from the closure and of the public issue. It is the case of the complainant that he also protested to opposite party-5 by sending it a legal notice, but even then he was not allotted any share by it, causing serious loss to him. The complainant on the basis of these averments sought compensation of Rs. 1,04,100/-. The estimate of this amount is mentioned in paragraph-8 of the complaint. The complainant filed an affidavit and five documents in support of his case.

Opposite parties-4 and 5 were granted several opportunities to file their replies and also burdened with costs for not filing their replies. Neither they paid the costs, nor they filed their replies. Hence, their defence was struck off by the Commission on 27.10.1993. In response to the notices of this Commission, opposite parties-1 to 3 filed their version and they took up a number of preliminary objections to which a reference is unnecessary since they have not been pressed before us. On merits, opposite parties-1 to 3 in terms admitted paragraphs-1 to 3 of the complaint and stated that the application money of Rs. 1,000/- sent by the complainant was received by the Ludhiana Bank and this amount could not be remitted to opposite party-4 due to rush of work in the Bank. While controverting the allegations in paragraphs-5 and 6 of the complaint, it was averred by the opposite parties that the amount of Rs. 1,095/- was sent back to the complainant with interest in order to compensate him for the period for which the money was withheld by the Bank and therefore, no loss was caused to him.

3. WHEN the case was called for hearing, neither opposite parties-1 to 3 nor their representative had appeared. We have heard Shri Deepak Arora, Advocate for the complainant and perused the documents and the written statement filed on behalf of opposite parties-1 to 3 with requisite care. The primal stand of the complainant before us is that he had applied for 200 shares and deposited the requisite application money of Rs. 1,000/- with the Ludhiana Bank within time, but despite his having done so, he was not allotted any share by opposite party-4 and that due to the negligence on its part, he had to suffer a loss of Rs.

1,04,100/-. So far as the deposit of Rs. 1,000/- with the Ludhiana Bank by the complainant is concerned, this fact has not been denied by opposite party-2. It is true that opposite party-4 had hired the services of the Ludhiana Bank for the purpose of collecting the application money for allotment of shares on its behalf and there is privity of contract between the said Company and the Bank, but there is no privity of contract between the complainant for allotment of shares and the Bank though the money was deposited in the Bank by the complainant for allotment of shares. In the present case, opposite party-4 had hired the services of the Ludhiana Bank for collecting application money for the prospective allotment of its shares. The complainant was the beneficiary of such an arrangement with the approval of opposite party-4. The complainant, therefore, squarely falls in the definition of ''consumer'' u/Sec. 2(1)(d)(ii) of the Consumer Protection Act (for short ''the Acf). The complainant, therefore, has a right to complain about deficiency in service rendered by the Ludhiana Bank in the transaction. The transaction between the Company and the complainant was only about the consideration of application money of the latter for allotment of snares. Actually offers were invited for allotment of shares and those offers were to be accepted in accordance with the basis determined under the provisions of the Companies Act, 1956 and the rules made thereunder. The transaction between the complainant and the Company, therefore, did not involve any service and consequently, there would be no deficiency in service which could be complained of against opposite party-4. Before adverting to the merits of the case, it deserves highlighting that the whole trouble herein has primarily arisen because the Ludhiana Bank did not remit the application money of the complainant to opposite party-4. As already pointed out, as the services of the Ludhiana Bank were hired by the Company for the benefit of the applicants, the complainant-applicant will be deemed to be a ''consumer'' visa-vis, the Bank. If there was any deficiency in service on the part of the Bank in the transaction, the complainant could maintain an action as a ''consumer'' under the Act. There is undoubtedly deficiency in service on the part of the Ludhiana Bank, as instead of remitting the application money of the complainant to the Company for allotment of shares, the same was retained by it and the reason for not doing so, was stated to be due to rush of work in the Bank which is not at all convincing to us. Having regard to the material on record, we have no doubt in our mind that the Ludhiana Bank was at fault in not remitting the application money of the complainant to the Company and the quality, nature and manner of performance of the service which the Bank had undertaken, was hopelessly inadequate. All this has happened due to the wanton and deliberate acts of omission and Commission on the part of the Ludhiana Bank. A Nationalised Bank should not have acted in the manner it had acted in this case. The complainant has claimed Rs. 1,04,100/- as compensation from the opposite parties. He has not specified the basis on which he presumes that if the application money had been remitted, he would have been allotted the shares of the Company of which he alleges to have suffered a loss. It is impossible to fathom as to whether the complainant would have been successful in getting allotment of any share even if his application money had been forwarded by the Ludhiana Bank. It would have been a matter of chance and no body could say whether he would have been fortunate in falling under the category of those allottees of shares. The claim for allotment of 200 shares or to be compensated on the basis that the complainant was entitled to those shares is, therefore, without any foundation. However, a reasonable compensation for having lost the chance of being considered for allotment of shares, has to be awarded to the complainant. We feel an amount of Rs. 2,500/- should be sufficient compensation for the deficiency in the service and negligence of the Ludhiana Bank.

4. FOR the aforesaid reasons, we partly allow the complaints Nos. 20, 25, 26 and 27 of 1992. Bank of Baroda, Clock Tower Branch, Ludhiana is directed to pay Rs. 2,500/- as compensation and Rs. 500/- as costs to each of the complainants. The application money deposited by the complainants in the Ludhiana Bank, if not refunded so far shall be refunded to them, along with interest at the rate of 15% p.a. from the date of deposit till the payment. These amounts shall be paid to the complainants within four weeks from the receipt of this order by the Ludhiana Bank failing which, compliance will be enforced u/Sec. 27 of the Act. Complaints partly allowed.