(1992) 08 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

SH.PARAMANANDA TRIPATHY APPELLANT

Vs

BANK OF BARODA RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : 1992 3 CPJ 231

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Complaint dismissed

Judgement

1. DEFICIENCY in banking service is grievance of Complainant.

2. WIFE of complainant got 38 acres of agricultural land in mouza Kochila Nuagaon under Chowdwar Police Station of Cuttack District by gift in name of her son. Complainant had put a fence around it and constructed a farm house in 1952. In 1971 Complainant approached opposite party bank for agricultural finance as per Reserve Bank Circular dated 9.12.70. After getting the necessary reports loan was sanctioned for Rs. 15,000.00 on strength of deposit of title deeds. Instead of disbursing loan by installments as per circular of Reserve Bank, it paid Rs. 2,100/- on 28.1.1972. After spending the amount within one week and submitted a report of work done on 7.2.1972. Thereafter, on verification being satisfied bank advanced Rs. 3,000.00 on 8.2,1992. Complainant submitted a further report of work done on 10.5.1972. Within two days a further sum of Rs. 2,500/- was released on 12.5.72. On 28.5.72 complainant submitted a report of the work done 2 and requested for a balance of Rs. 7,000/-. Hence, no inspection was made and no loan amount was advanced. For Five years approaches by Complainant were fruitless. On 7.10.1977 Complainant met Agricultural Officer and explained him the difficulty. On 24.11.1977 Agricultural Officer addressed a letter to complainant calling for a discussion. On advice of Agricultural Officer of the Bank to submit a fresh scheme, complainant after consultation with Block Development Officer submitted a fresh scheme for Rs. 2,25,000/- on 30.11.1977 to the Bank. When for two years the Bank remained silent, in spite of approaches, complainant filed O.J.C. No. 1672 of 1979 which

was disposed of on 8.10.80 asking opposite party to sanction funds for a new scheme to cover all losses and to entertain a claim for waiver. Complainant submitted a very moderate scheme for Rs. 1,60,000.00 in consultation with the Block Development Officer on 17.12.1980. Complainant was called for discussion in letter dated 17.2.1981. On discussion on 21.2.1981, complainant was advised to obtain a scheme for cultivation of Palmerosa Grass from District Industries Centre. On 26.3.1981 complainant submitted such a scheme which was not sanctioned on lame excuses and T.M.S. No. 518 of 1982 was filed by the bank for recovery of Rs. 7,600/- with interest in respect of loan advanced in 1972 which is pending. Making the aforesaid assertions, complainant has claimed compensation of Rs. 7,22,000/- explaining that it is hardly possible for him to approach the Civil Court for compensation and complainant was apprehensive that he would get the relief during his life-time as sought for redress in this alternative forum available. Opposite party in its statement asserted that T.M.S. No. 518 of 1982 is for Rs. 22,462.70 along with interest upto 20.11.1982. While considering application for loan bank does not render any service and no service charges are taken for considering such application. Since complainant or his son who had received Rs. 7,600/- did not turn up with utilisation certificate for further disbursement, no further amount has been paid. Bank requested complainant to pay back the amount due in its letters dated 8.6.1972, 3.10.1974, 8.7.1976, 21.9.76, 29.10.76, 24.11.77, 8.1.79 and 15.11.1979. Bank did not accept request of the complainant for further loan for cogent reasons and the fact was intimated to complainant on 1.5.1979. After decision in O.J.C. No. 1672 of 1979, com plainant requested for a loan of Rs. 1,60,000/-. He switched over to another new scheme for production of Palmerosa oil with project cost of Rs. 7,74,000/-. This was not suggested by the bank. Complainant expressed his inability to deposit the margin money and asked to treat value of the land mortgaged as margin money. While Bank expressed its inability to advance the loan, it requested for payment of the dues in its letter dated 2.5.1981 where reasons for not accepting the request were indicated. Bank, however, intimated that it has no objection if loan is raised from any other banking institution. In these circumstances, the suit was filed where some witnesses have been examined and cross-examined. On prayer of complainant to change his lawyer, suit is pending. Complainant should have filed a counter-claim.

Complainant filed a rejoinder to which a counter has been filed by the Bank.

3. ALTHOUGH opposite party asserts that consideration of a loan application is not a service which is hired since it does not take any service charges, we are inclined to hold that it is service as defined under the Act. Consideration for the service is included in the interest to be paid on the loan when sanctioned. Complainant seeks to agitate a question relating to transaction since the year 1972 ending with the refusal by Bank on 2.5.1981 and its continuing effect till 21.8.1991 when this complaint was filed. There is no revival of the request after 2.5.1981. Thus, deficiency in service committed more than ten years before is sought to be examined by us. We are not inclined to examine the same when

complainant himself asserts that he has an alternate remedy by approaching the Civil Court. Since we are not deprived of any power to examine the question, we might have considered the same if his son would have been a complainant along with him. As we find in the writ application he was the petitioner claiming relief as unemployed graduate. Said fact weighed with High Court to finally decide the case. It was observed: "Ordinarily, this is not a matter for consideration under Article 226 of the Constitution, but we thought that if notice was issued, possibly the petitioner, an un-employed graduate could be helped and the scheme which had once upon a time been accepted by the Bank, opposite party No. 1 could be worked out". (Emphasis added)

4. RELIEF to be granted under the Consumers Protection Act is equitable based on rights of a consumer. Where consumer does not disclose full back-ground and makes an endeavour to suppress facts to get redressal under the Act, a redressal agency created under the Act should not extend its helping hand even in a benevolent statute and should leave the consumer to have his remedies in the conventional forums. In this case, many facts disclosed by the Bank supported by documents were not stated to us by the complainant These facts are also not disputed by complainant in his rejoinder. On consideration of these facts, we find that Bank was not unreasonable in considering the request of complainant for loan while expressing its inability. Although it could have withheld its no-objection, until the previous loan is cleared, Bank acted fairly to give no-objection so that complainant can secure loan from any other financial institution. These are some of the circumstances which are highlighted to come to a conclusion by taking note of totality of the situation that there is no deficiency in service. Simple breach of contract short of deficiency in service is not justiciable in a redressal agency constituted under the Act. In result, there is no merit in this complaint which is dismissed. Complaint dismissed.

