(1998) 01 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

SHYAMSUNDAR SHRIBHAGWAN JAIPURIA — APPELLANT

Vs

CANBANK MUTUAL FUND — RESPONDENT

Date of Decision : 30-01-1998

Acts Referred:

Citation : 1998 2 CPJ 511

Hon'ble Judges : A.A.Halbe , G.R.Bedge J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an attempt on the part of the appellants/original complainants to enlarge the jurisdiction of the District Forum over the matter which involve market forces and the determination of net asset value in regard to the Units issued by various Mutual Funds. According to the appellant, the District Forums or for that purpose even the State Commission is empowered to go in to the question of evaluation at the time of redemption of Units issued by the various Mutual Funds. The Mutual Funds are bound by the terms of Letter of Offer. The valuation should be done for disbursement of final dividend alongwith the face value of the Unit, after the Scheme is terminated. The valuation should be done only after the date of the termination and the price determination of the various investments in the shares should be undertaken on the date of final termination of the Scheme and if any attempt is made to dissolve the Scheme prior to the period stipulated in the Letter of Officer, the same should be struck down and that the revaluation of the Units should be done on the basis indicated above. The facts are indeed based on these propositions.

2. THE complainant purchased 100 Units of CAN 80 CC (89 units) each of Rs. 100/- under Certificates Nos. 27862 and 18465. As per the terms of offer, the duration of the Scheme was upto 31.3.1989 and that the termination of the scheme was on completion of three years i.e. 31.3.1992. Clause 16 of the latter of Offer shows that the Trustees of the CANBANK MUTUAL FUND may liquidate the Fund after completion of 3 years from the date of closure i.e. on or after 31.3.1992. Upon termination of the Fund, the Trustees were to sell or realise all

realisable securities, instruments and other properties forming part of that Fund in the hands of the Trustees. Out of the realisations so made, the Trustees were to pay or provide for payment of all liabilities, existing or contingent, allocable and apportionable in respect of the Fund and unpaid dividend. Unpaid dividend was to be credited to the Bank Account which was to be opened at the end of the termination. THE net realisation of the fund was to be distributed by the Trustees to the Unit-Holders on production of the respective Certificates. The main idea behind floating the Scheme is to mobilise the support of the public to invest those funds in securities, shares which are of good Companies, to realise the dividend if any paid by those Companies and to distribute the amount so collected by way of dividend of the Mutual Funds to the investors and at the end of the Scheme, the entire Scheme is to be wound up by disposal of all the shares, securities etc. and distribute the sale proceeds after deducting the amounts required for squaring up the liability of the fund. The investors were to get the concession or tax benefit to the extent of Rs. 10,000/- out of the taxable income.

Now, according to the complainant, the opposite party Mutual Fund terminated the Scheme on 31.3.1992 but worked out the net asset value at Rs. 305.47 ps. per unit on the basis of share value as on 31.1.1992. The main allegation is that the N.A.V. of Rs. 320.85 ps. paid is much less because the shares drifted very heavily upwards between 31.1.1992 to 31.3.1992. The shares should have been valued on 31.3.1992 and not on earlier date. Had it been valued on the basis of the then prevailing price, the N.A.V. would have been Rs. 700/- per unit. As the complainants have been paid Rs. 320.85 ps. for each 100 units, they are entitled to further amount of Rs. 379.15 ps. for those number of Units. Heavy reliance is placed by the complainants on terms of Letter of Offer and'' according to the complainant, these terms are binding upon the opposite party No. 1. Clause 16 as indicated clearly shows that it is only after the termination, the trustees are to sell the shares, realise the proceeds and distribute those proceeds. If Clause 16 is read as it is, it was the bounden duty of the trustees to have sold the shares at a market price prevailing on 31.3.1992 and disburse the dividends. The complainants have cited the three instances of the investments made in various Companies by the Mutual Fund. The complainants have also tendered the documents showing participation of the opposite party No. 1 in cases of three companies besides other cases. By way of the illustration in Document No. 21, the complainants have stated that the DCL Polysters with share price of Rs. 10/- was quoted at Rs. 90/- on 31.3.1992. The share of Nihon Nirman, having face value of Rs. 10/- was quoted at Rs. 85/- on 31.3.1992. Similarly, Grapco Granites share of Rs. 10/- was quoted at Rs. 70/-. This would show that on an average as against Rs. 30/- the price quoted was Rs. 245/-. The average value is, therefore, Rs. 81/- as against the purchase price of Rs. 10/-. There was, therefore, 800% rise meaning thereby that each share of Rs. 10/- would have fetched minimum of Rs. 80/- and in this background, the N.A.V. of the units of the Mutual Fund could be atleast Rs. 70/- per unit. On these illustrations &

calculations, the complainants claim Rs. 379.15 ps. per hundred units plus Rs. 5,000/- towards expenses and Rs. 25,000/- towards mental agony. The complainants have also drawn our attention to Rule 38 of the Scheme which also requires the procedure to be followed as per Clause 16 of Letter of Offer. 4. The respondents, in their written statement, have disclosed their entire case. According to the respondents, the scheme was terminated with effect from 1.4.1992 and that the complainants have approached after one year of termination for claiming the compensation. It is pointed out that out of 33,000 investors in this Scheme, only the present complainants are the persons who have grievance against the Mutual Fund. As against the investment of Rs. 1,000/- they are rewarded with a return of Rs. 3020.80 ps. They have earned appreciation of more than 300% of their investment within a short period of three years. The claim of Rs. 700/- per 100 units is something fantastic. It is a figment of imagination in selecting the few groups for the purpose of arriving at N.A.V. of Rs. 700/- per 100 units.

3. IT is further pointed out that Rule 38(1) is as follows: "Notwithstanding anything contained herein above, the Trustees shall have power to dissolve, wind up and/or terminate by giving one month''s notice in newspaper, the CAN 80 CC Scheme No. I."

(ii)Clause No. 2 is the same as quoted by the complainants. Relying on these clauses, it is contended that although in the Letter of Offer, the scheme could not be terminated earlier than 31.3.1992, there were powers vested in the trustees to dissolve the scheme earlier and in exercise of those powers, the trustees started disposing off the shares and securities earlier and worked out the N.A.V. on the date of the termination i.e. 31.3.1992. The same had to be effected previous to 31.3.1992 and there were definite guidelines in that regard. The securities and shares were to be disposed off at the then prevailing market price by following the procedure enunciated hereafter. (iii) In case of securities registered with Bombay Stock Exchange, the market rate was to be arrived at by average between the lowest and highest rate on the date of transfer. The securities which were yet to be listed on the Stock Exchange were to be determined at par value. When no allotment was made on the application money paid pursuant to the rights'' issue, the same were also to be valued at the prevailing market rate.

Out of the total realisation of proceeds, necessary expenses were to be deducted and balance was to be distributed to the Unit-holders is accordance with the Scheme. By following this procedure, the unit-holder became entitled to Rs. 307.45 ps. per 100 units. Although the scheme was terminated on 31.3.1992, the Securities and Investments of opposite party No. 1 were being converted into cash on prior dates. Cash credits were continued to be held upto 31.3.1992 and on 1.4.1992, the assets of the Fund comprised of cash realisation which were distributed amongst the unit-holders on that day.

4. WE have carefully gone through the pleadings and the documents tendered by

the parties. The complainants relied on Rule 38(2) and their sub-clauses whereas the Mutual Fund has relied on Rule 38(1). WE have no hesitation in coming to the conclusion that although the Letter of Officer stipulated that the Scheme shall be terminated on 31.3.1992, the power is vested in the Trustees to dissolve the Fund even on earlier date; but by following the procedure as indicated in the Rule. It is also stated that the Letter of Offer or the Rules does not make it obligatory on the Trustees to invest in the shares which could be dictated by the Unit-holders. The Fund Management is wholly within the domain of the Trustees. The trustees may handle the funds in best manner possible. But it was not obligatory on them that they should look for the shares which tend to go upwards. The share market operates on expectations, assumptions and presumptions. There is an element of speculation in the investment and we can not ignore the proposition that some shares may dive down to an unprofitable level on account of prevailing market forces. The complainants have referred to three share instances which were quoted high at the time of termination. But we cannot subscribe to the suggestion that all the investments were enjoying high prices at the end of March, 1992. The Trustees had a wide discretion to visualise and forecast the trend of the prices of the shares and in cases of some scripts, the judgment may not come true. But these are all the part of share market game. The complainants want to probe in to the study of the market forces, refer the highest prices prevailing in respect of some scripts and then to work out the N.A.V. as a highest amount as on the termination of the Scheme. These are the questions which are solely within the domain of the Mutual Fund. The Managing Trustees are the best persons to look after the investments having regard to prevailing and future market trends. We can not lose sight of the fact that the termination was intimated to the Securities & Exchange Board of India. It is not in dispute that the SEBI is a regulatory Body in respect of the Mutual Funds etc. The Stock Exchange was intimated by letter dated 16.4.1992 about the dissolution.

5. WE, therefore, feel that these are the questions which clearly fall outside the purview of the District Forums or even the State Commission.

6. THERE would have been deficiency in service, had the complainants not been issued the Certificates on the application. To that extent, the District Forum is competent to investigate. But the further area of market forces cannot be considered by the District Forum under the Consumer Protection Act. All that can be investigated is whether proper Unit Certificates were issued to the investors. However, the management of the Fund is the sole prerogative of the Trustees of the Mutual Fund. It can be observed that they are the persons who are well versed with the market forces, the share prices etc. The Commission or the District Forums are not supposed to probe into these discretions. We are, therefore, of the view that although the complainants may have grievance, the District Forum or for that purpose, the Commission cannot award any compensation. The complainants could have taken up the matter with SEBI and asked for enquiry into the N.A.V. worked out by the opposite party No. 1 before

31.3.1992. We, therefore, dismiss the appeal, confirm the order of the District Forum. No order as to cost. Appeal dismissed. _______________ Z

