(2015) 02 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Case No : NO 3301 of 2010

SREE NARAYANA DHARMA PARIPALANA — APPELLANT

Vs

SMITHAMOL. S & ORS. — RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Citation : 2015 2 CPJ 157

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Santhosh Krishnan, Hari Kumar G., V. K. Sidharthan

Judgement

1. The petitioner/opposite party no. 1 is a company incorporated under Travancore Regulation Act of 1063, whereby Indian Companies Act, 1882 was adopted. After coming into force of Companies Act, 1956, the petitioner/opposite party no. 1 is deemed to be a Company with limited liability. The purposes of the petitioner, as laid down in its Memorandum are as under:- 3. Purposes of this Yogam:

a. To perform the daily poojas, yearly festivals and other connected matters of the Aruvipuram Siva Temple and the other temples coming/come under it.

b. For improving the religions and general education of the Ezhava Community and their industrial aptitudes establish in Aruvipuram and if required in other Districts, temples, Sanyasi Madoms, educational institutior etc. and to provide encouragements to them.

c. To get under sale or hypothecation/lease any land building or both and to purchase the equipments required for them.

d. To sell or to give under pledge or lease as required the movable and immovable properties of the Yogam.

e. To prepare deed of transfers like promissory Notes etc. to receive such documents or to renew such documents.

f. To perform everything required for achieving the above said purposes or any among them."

2. The petitioner Company is entitled to have branches and unions and it is administered by a Board of Directors. The general body of the petitioner Company directly elects the President, Vice-President, General Secretory and Bawaswom Secretary and the said board consists of not more than 200 members. A Shakha for a particular area can be registered by about 100 members of the petitioner Company. The said Shakha is required to be registered with the petitioner Company. Every Shakha Yogam has demarcation of boundaries and there can be not less than 150 and not more than 250 houses in each Shakha. Two or more branches in one Taluk could combine together to form a union, which is called Shakha Yogam. In addition to President, Vice-President, General Secretary and Bawaswom Secretary, the Board of the petitioner SNDP Yogam also has Directors elected directly by general body as well as the Directors recommended by the unions. The union having 30 divisions has the right to select and recommend one Director, whereas if it has 30 to 60 divisions, it can recommend and select two Directors. The Directors by the Union have to be elected at the general body meeting which is to be convened with the approval of the petitioner SNDP Yogam, which has full freedom to approve or not approve the elections of the Directors by the Union and if the election by the Union is not approved, the election for that position has to be done at the general body meeting.

3. The case of the complainant, as set out in the complaint is that in January, 2005, opposite parties no. 3 and 4, who are the President and Secretary respectively of branch no. 363 of SNDP Yogam approached her and lured her with promise saying that they were in the habit of receiving the deposits and would be paying interest to her at the rate of 18% per annum. They also told her that the money taken from her would be lent to others at a higher rate of interest and they would invest the same in real estate business. They also represented to the complainant that the branch had an Auditorium Cum Kalyan Mandap and the money would be invested in some other better lucrative endeavours. According to the complainant, believing the said representation made to her, she deposited Rs. 2 lakhs on 11.01.2005, followed by deposit of Rs. 50,000/- on 11.02.2005 for which a pass-book was issued to her. She made yet another deposit of Rs. 2 lakhs on 11.10.2005, thereby taking the total deposits to Rs. 4,50,000/-. The complainant was paid interest on her deposits till 11.09.2006. Thereafter neither the interest was paid nor the principal amount was refunded to her by opposite parties no. 2 to 4. The complainant, therefore, approached the District Forum seeking realisation of a sum of Rs. 5,04,000/- inclusive of interest from opposite parties no. 1 to 4, alongwith compensation and interest.

4. The complaint was opposed by the petitioner Company primarily on the ground that the complainant was not a consumer and it was not a necessary

party to the complaint since it had not entered into any transaction with the complainant. It was alleged in the reply that if any amount was deposited by the complainant with Shakha, the petitioner was not responsible for any loss to her. It was further alleged that internal management of the Shakha vested with them.

5. Vide order dated 30.10.2008, the District Forum directed all the opposite parties, including the petitioner before us to pay a sum of Rs. 5,04,000/- to the complainant alongwith interest on that amount at the rate of 18% per annum, from the date of filing of the complaint. A sum of Rs. 10,000/- was awarded to the complainant as compensation, alongwith a sum of Rs. 2,000/- as costs of litigation.

6. Being aggrieved from the order passed by the District Forum, the petitioner Company approached the State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 08.04.2000, the petitioner is before us by way of this revision petition.

7. The Memorandum and the Articles of Association of the petitioner Company were analysed by the State Commission in total, in para 11 to 14 of its judgment and on such analysis, the State Commission found that the opposite party no. 2, i.e. Shakha No. 363 were under the control and management of the petitioner Company. In view of the said control and management, the State Commission held that the petitioner Company was also liable to compensate the complainant for the money which she had deposited with the Shakha.

8. A perusal of the Memorandum of the petitioner Company as extracted hereinabove, clearly shows that raising deposits for the purpose of lending them at a higher rate of interest and thereby carrying on the business of finance was not one of the objectives of the petitioner Company. Hence, neither the Board of Directors of the petitioner Company nor its General Body could have accepted the deposits from the members, without first amending the memorandum of the petitioner Company. Therefore, taking deposits from the complainants was certainly beyond the scope of the authority of the respondent nos. 3 and 4 and even of respondent no. 2, i.e. Branch No. 363. Though, there is no evidence that the petitioner Company had permitted branch no. 363 to accept deposits from its members or even that the said deposits were in its knowledge, even if we presume that the said deposits were in the knowledge of the petitioner Company, that would be of no benefit to the complainant since even the petitioner Company could not have accepted any deposit either from the complainant or from any other members for the purpose of carrying out financial activities such as taking deposits and lending the same at a higher rate of interest. Consequently, it cannot be disputed that the acts of opposite parties no. 2 to 4, i.e. Branch no. 363, its President and its Secretary in taking deposits from the complainant was ultra vires powers conferred upon them by the Memorandum of the petitioner Company. The complainant, in our opinion before giving deposits to opposite parties no. 3 and 4 should have consulted the Memorandum of the petitioner Company to verify whether the said Company or its Branch was

competent to accept the deposits from her or not. That having not been done, it would be difficult for us to hold the petitioner Company to be vicariously liable for the misconduct of branch no. 363 and its office bearers in accepting the deposits from the complainant in contravention of the Memorandum of the company. Of course, as far as the opposite parties no. 2 to 4 are concerned, they certainly were deficient in rendering services to the complainant since without having any authority to do so. They firstly accepted the deposits from the complainant and then failed to honour the commitment made by them to her.

9. The learned counsel for the petitioner during the course of hearing relied upon the decision of the Hon''ble Supreme Court in A Lakshmanaswami Mudaliar & Ors. Vs. Life Insurance Corporation of India & Anr., 1963 Supp. (2) SCR 887 . In the aforesaid case, a Company namely United India Life Assurance Co. Ltd., which was incorporated under the Indian Companies Act, 1882, passed a resolution sanctioning a donation of Rs. 2 lakhs, out of the shareholders dividend account to the Trust, which was proposed to be formed with the object, inter-alia, of promoting technical or business knowledge, including knowledge in insurance. Two of the Trustees of the said Trust were also the Directors of the aforesaid Company. The donation was duly paid to the Trust in terms of the aforesaid resolution. After nationalisation of Life Insurance in the country, all the assets and liabilities of the Company came to be converted in LIC of India, which then called upon the Trusts and the Trustees to refund the amount which the Company had donated to them. The Tribunal having ruled in favour of the LIC of India, the matter was taken by the Trustees to the Hon''ble Supreme Court. Rejecting the plea taken by the Trustees, the Hon''ble Apex Court, inter-alia, held that where a Company does an act which is ultra vires, no legal relationship or effect ensues therefrom. Such an act is absolutely void and cannot be ratified even if all the shareholders agree. The Hon''ble Supreme Court, however, upheld the personal liability of the Trustees, who were Directors of the Company at the time the resolution was passed. The aforesaid judgment in our view squarely applies to the case before us. Neither branch no. 363 nor its office bearers had any legal authority to accept the deposits from the complainant. Consequently, the petitioner Company cannot be held vicariously liable to refund the deposits taken by it from the complainant.

10. For the reasons stated hereinabove, the revision petition is allowed and the orders passed by the State Commission and the District Forum to the extent they pertain to the petitioner Company are hereby set aside. We make it clear that since the other opposite parties have not challenged the order passed by the State Commission and the District Forum, the complainant shall be at liberty to execute the order against the opposite parties other than the petitioner before us.

