(1990) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

STATE BANK OF HYDERABAD APPELLANT

Vs

Bairi Lingam RESPONDENT

Date of Decision : 21-07-1990

Acts Referred:

Citation : 1991 1 CPJ 362

Hon'ble Judges : LAKSHMANA RAO , POTHURI VENKATESWARA RAO , VANAJA IYENGAR J.

Judgement

1. IN all these Appeals in which State Bank of Hyderabad Raikal Branch is the appellant, as common question arise for consideration, they are disposed of by a common order.

2. HAVING been aggrieved by the common order dt. December 23, 1989 passed by the District Forum, Karimnagar in Consumer Dispute Nos. 18 to 38 of 1989 directing the opposite party. State Bank of Hyderabad, Raikal branch to sanction loan of Rs. 25,000/ - to each one of the complainants, these appeals have been preferred. The respondents in all these appeals are weavers by profession. They are residents of Raikal village, Karimnagar district and are members of Backward Class. They had worked for some time on powerlooms in Bhivandi, Maharashtra State. They had returned from Bhivandi to their native place due to some trouble at Bhivandi. It is stated that all of them are poor, unemployed persons. Having come to know that the Government was granting loans to poor unemployed persons for installation and running of powerlooms, the respondents approached the President, Mandal Praja Parishad, Raikal for help in that regard. Accompanied by the Mandal Praja Parishad President, they met the Assistant Director of Handlooms and Textiles, Karimnagar. On his advice, the respondents submitted applications to him on March 28, 1988 for provisional registration of proposed small scale industrial units. On March 31, 1988, he provisionally registered the proposed S.S.I. Units for the manufacture of cotton gray cloth on powerlooms and granted provisional registra - tion certificate dated March 31.1988 in favour of each one of the respondents herein. Ex. A -2 is one such certificate issued to M/s. B.L. Textile (Bairi Lingam, respondent in C.D.A. No. 6/90). PW -1 who is the

respondent in C.D.A. No. 6 of 1990 deposed that he had remitted Rs. 500/ - by way of challan towards provisional registration fee of the unit consisting of two powerlooms. So also the other respondents had remitted the money.

3. ON March 31, 1988 itself, the respondents herein applied to the General Manager, District Industries Centre, Karimnagar for the issue of eligibility certificate under 10% Central Subsidy scheme. He issued eligibility certificate dated March 31, 1988 to each one of the respondents and requested them to furnish the claim application within six months from the date of going into production. Ex. A3 is one such certificate issued in favour of the respondent in C.D.A. No. 6 of 1990.

4. THEREAFTER , the respondents approached the Assistant Director of Handlooms and Textiles, Karimnagar and requested him to recommend to the Divisional Executive Engineer, A.P. State Electricity Board, Karimnagar for supply of electrical energy to the proposed Small Scale Industrial Units. Through his letter dated April 11, 1988 (EX. A4) addressed to the Divisional Executive Engineer, A.P.S.E.B., Karimnagar, he requested the Executive Engineer to consider the case of the respondents for supply of electrical energy for the purpose of installation and running of the powerlooms. It was mentioned therein that provisional registration was granted for those units under the S.S.I. Scheme. The Assistant Director, Handlooms and Textiles, Karimnagar had also prepared a feasibility scheme for two powerlooms. The respondents remitted Rs. 500/ - each to the A.P. State Electricity Board and the Divisional Engineer, A.P. State Electricity Board and the Divisional Engineer, A.P.S.E.B., Karimnagar issued a feasibility certificate to each one of them. While so, the Mandal Development Officer Raikal Mandal Praja Parishad had written a letter dated April 5, 1988 (Ex. A5) to the Manager, State Bank of Hyderabad, Raikal Branch, the appellant herein recommending for advancement of loan to each one of the respondents at the rate of Rs. 36,400/ - and for the issue of consent letter to that effect. It was mentioned therein that on the basis of such consent letter, the Karimnagar District Backward Classes Service Cooperative Society had agreed to release margin money at the rate of 20% of the estimated cost. It was further stated in that letter that the respondents had purchased 23 guntas of land in survey No. 781 and that possession also was delivered to them. The following particulars relating to cost of the proposed unit were specified therein: Land : Rs. 5,000=00 Shed : Rs. 10,000=00 Machinery : Rs. 37,000=00 Total : Rs. 52,000=00 Subsidy : - 10% subsidy in terms of Government of India, Ministry of Industrial Development, New Delhi letter No. 7(15) 71/IS, dt. 3.9.1971/4.1.1981/ BAC (Vol. III) dated: 27.4.1983. 20% margin money. Balance amount: Rs. 36, 400 = 00.

The Manager, State Bank of Hyderabad. Raikal Branch, appellant herein gave a consent letter dated May 3, 1988 (Ex. A6) agreeing to advance loan to each one of the respondents herein. On the basis of that consent letter, the Karimnagar District Backward Classes Service Cooperative Society, of which the District

Collector is the Chairman sanctioned 20% margin money in favour of the respondents and release the same as is evident from Ex. A7 dated March 6, 1989.

5. PW -1 who is the respondent in C. D.A. No. 6 of 1990 deposed that after the release of the margin money of Rs. 5,000/ - each, by the Karimnagar District Backward Class Service Cooperative Society, he had started construction of the shed and obtained quotations for the purchase of powerlooms from Bhivandi. He also obtained permanent registration certificate dated August 27, 1988 (Ex. A8) issued under the Textile Control Order, 1986 by the Director of Handlooms and Textiles, Andhra Pradesh, Hyderabad for two powerlooms. Thereafter, he joined as a member of the Karimnagar Sizing Cooperative Society Limited, Industrial Estate, Karimnagar and that Society informed the Branch Manager, State Bank of Hyderabad, Raikal through Ex. A9 that all the respondents herein were the members of their Society and the Society was ready and willing to supply sized beams to them as per their requirements. PW -1 had categorically deposed that the Manager, State Bank of Hyderabad Raikal Branch was aware of all the facts and circumstances referred to above. His evidence was treated as common evidence in all the complaints.

6. ULTIMATELY , as the Branch Manager, appellant herein had refused to advance the loan contrary to his consent letter, the respondents herein filed complaints before the District Forum, Karimnagar under the Consumer Protection Act, 1986 (hereinafter referred to as the Act) claiming compensation of Rs. 20,000/ - each or in the alternative to direct the Bank to advance the loan to them. The District Forum overruled the preliminary objection raised on behalf of the Bank and held that the complaint was maintainable under the provisions of the Act. It directed the Bank to advance the loan of Rs. 25,000/ - to each one of the respondents herein. The main contention advanced on behalf of the appellant is that the respondents herein who had applied for loan cannot be said to be consumers within the meaning of the Act as the transaction relating to granting of loan cannot be characterized as the one relating to hiring of services and therefore, the complaints are not maintainable under the provisions of the Act.

7. STATE Bank of Hyderabad is one of the Nationalised Banks carrying on banking business. It is governed by the provisions of the Banking Regulation Act, 1949. Of all the functions of a modern Bank, it is said that lending is the most important function. Substantial portion of the revenue of a Bank comes "from interest and discount that is to say income derived from advance including bills discounted and bills purchased and interest on investments." It is a matter of common knowledge that advances comprise a very large portion of Bank''s assets and the strength of the Bank is primarily judged by soundness of its advances.

8. FROM the year 1983, the nationalised Banks have been implementing the scheme for providing self -employment to educated unemployed youth. The scheme provides for a package of incentives to the poor unemployed persons to establish self -employment ventures, including loans at concessional rate of

interest from the Banks upto a limit of Rs. 25,000/ - without any margin or collateral security. Under the scheme, and District Industries Centres have been assigned the operational responsibility to be discharged in consultation with the Lead Banks of the respective areas. As per the procedure prescribed under the scheme, it is for the Task Force at the District Industries Centre with the Manager, District Industries Centre as its Chairman, to identify the beneficiaries subject to their projects being found viable and sponsor their applications to the Lead Bank for the financial assistance. On such identification and sponsoring, the Bank will provide to each one of the beneficiaries assistance by way of composite loan not exceeding Rs. 25,000/ -. No collateral security/3rd party guarantee is required to be asked by the Bank for such advance. There is no dispute, that the State Bank of Hyderabad, Raikal Branch, the appellant herein is the Lead Bank of the area. The respondents herein are the poor unemployed persons. Being weavers by profession, they want to set up small scale industrial units of two powerlooms each. For that purpose, they got the units provisionally registered under the Small Scale Industries Scheme, with the Assistant Director of Handlooms and Textiles. Karimnagar on March 31, 1988. He prepared a feasibility report of the scheme. He recommended to the Divisional Executive Engineer, A.P.S.E.B., Karimnagar for consid - eration of the requests of the respondents herein for providing power supply to the units. The District Industries Centre, Karimnagar issued the eligibility certificate dated March 31, 1988 in favour of each of the respondents herein enabling them to apply for 10% outright grant or subsidy in terms of Government of India, Ministry of Industrial Development letter dated April 27, 1983. The Raikal Mandal Praja Parishad placed all the necessary particulars relating to the proposed units before the Manager, State Bank of Hyderabad, Raikal Branch, the appellant herein and recommended for advancement of the loan of Rs. 36,400/ - to each one of the respondents herein. The appellant -Bank agreed to provide the loan as mentioned in its consent letter dated May 3, 1988 addressed to the General Manager, District Industries Centre, Karimnagar, a copy of which was marked to the Mandal Development Officer, Raikal. On the basis of that consent letter, the Karimnagar District. Backward Classes Service Cooperative Society sanctioned 20% margin money to the respondents and released it. The evidence of PW -1 who is one of the respondents herein reveals that the respondents had purchased the land and even commenced construction of the sheds. It is deposed that each one of them had spent about Rs. 10,000/ -. That version of PW -1 is corroborated by the evidence of PW -2 who is the President of Raikal Mandal Praja Parishad. The margin money that was paid by the Karimnagar District Backward Classes Services Cooperative Society was deposited by the respondents herein in the appellant - Bank. Curiously, after so much had happened, the appellant -Bank went back on its commitment and refused to advance the loan to the respondents.

9. IN the light of the facts and circumstances referred to above, it has to be considered whether the respondents can be said to have hired services for a

consideration and whether they are consumers within the meaning of the Act.

10. ''CONSUMER'' means any person who hires any service for a consideration. A consumer can file a complaint under the Act in respect of services hired by him if those services suffered from deficiency in any respect. The provision of facilities in connection with financing is specifically included within the definition of "service". "Deficiency" is defined as any fault, imperfection, short -coming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. The State Bank of Hyderabad, Raikal Branch which is the Lead Bank in the area had undertaken to perform the service of providing financial facilities to the poor unemployed persons by way of providing self - employment to them. The respondents herein wanted to utilize the services of the Bank. It is no doubt true that it is for the Bank to decide in each case having regard to the fact of that case whether financial assistance shall be provided to the concerned person or not and no person can claim as of right that the loan applied for by him shall be advanced under any circumstances. But, in the instant, cases, when the respondents approached the appellant -Bank for Advancing loan to them, the Bank had agreed to advance the loan and gave consent letter to that effect. On the basis of that consent, the Karimnagar District Backward Classes Service Cooperative Society sanctioned 20% margin money and released it in favour of the respondents at the rate of Rs. 5,000/ - each. That amount was deposited by the respondents in the appellant -Bank. The evidence on record discloses that on the basis of the consent given by the appellant -Bank to advance loan, the respondents had purchased the land and even commenced construction of the sheds for the installation of the powerlooms. The evidence of PW -1 who is one of the respondents is that they had spent Rs. 10,000/ - each for getting the loan. They had to pay interest at the rate of 6 1/2% per annum on the margin money released by the Karimnagar District Backward Classes Services Cooperative Society.

11. THE facts and the evidence referred to above clearly establish that the appellant - Bank had undertaken to perform the services as a Lead Bank by providing facilities in connection with financing. The respondents approached the appellant -Bank for hiring its services for a consideration in the nature of interest. The appellant -Bank had agreed to provide the services to the respondents by way of financial assistance. Therefore, we have no doubt that the respondents are consumers within the meaning of the Act having hired the services of the Bank in connection with financing, for a consideration.

12. THEN , we have to see whether there is any deficiency in the services hired by the respondents and if so, what is the relief they are entitled to. As we have mentioned above, the appellant -Bank which is the Lead Bank in the Raikal Mandal area had undertaken to perform the services by providing facilities in connection with financing in that area, to the unemployed youth. When the respondents had approached the Bank, it had agreed to make available its

services for a consideration in the form of interest. On the basis of the consent letter given by the Bank, the respondents had purchased the land and even commenced construction of the sheds. They had also withdrawn 20% margin money sanctioned by the Karimnagar District Backward Classes Services Cooperative Society on the basis of the consent letter of the Bank and deposited that amount on the Bank. Thus, the respondents had acted to their detriment on the promise made by the Bank. Subsequently, it refused to perform the services which it had undertaken to perform, thereby resulting in fault in the performance of the services. Thus, the services which the appellant -Bank has undertaken to perform suffered from deficiency. In a matter of this nature, no direction can be given to the Bank to advance loan to the respondents. Such relief is not contemplated even under Section 14 of the Act. But, it cannot be gainsaid that due to the deficiency in the services, the respondents had suffered both monetarily as well as the mentally and that suffering was caused to them solely due to the negligence on the part of the appellant -Bank. From the evidence on record, it is apparent that the respondents had acted on the basis of the consent given by the appellant - Bank, purchased the land and even commenced construction of the sheds for the installation of the powerlooms. The value of the land is said to be Rs. 5,000/ -. The respondents were sanctioned margin money at the rate of Rs. 5,000/ - each and it carries interest at the rate of 6 1/2% per annum. As per the evidence of PW -1 the respondents had spent about Rs. 10,000/ - each for securing the loan. The respondents claimed compensation at the rate of Rs. 20,000/ - each towards the monetary loss suffered as well as the mental suffering undergone by them.

13. IT is, however, urged on behalf of the appellant -Bank that as per Ex. B -1 consent letter given by it, the Bank never agreed to provide financial assistance of Rs. 52,000/ - to each one of the respondents and those words were interpolated in Exs. A6 and A11 had been produced before the District Forum by the Mandal Praja Parishad, Raikal. It shows that the Bank had agreed to advance loan of Rs. 52,000/ - to each one of the respondents. The fact that the appellant - Bank had agreed to advance loan to the respondents is borne out even by Ex. B 1 and the Bank does not deny it. Having thus agreed to advance the loan and made the respondents to act to. their detriment, the appellant -Bank is liable to pay compensation to the respondents towards the loss suffered by them due to the fault on their part in the performance of the services. Having regard to the evidence on record as to the monetary loss suffered by the respondents and the mental agony undergone by them, we are of the view that Rs. 10,000/ - would be the adequate compensation payable to each one of the respondents herein. We, therefore, direct the appellant -Bank to pay Rs. 10,000/ - by way of compensation to each one of the respondents herein within four weeks from the date of this order.

14. WE , therefore, hold that the direction given by the District Forum to the appellant - Bank to advance loan to the respondents is not correct and it is accordingly set aside. The appeal is allowed to the extent indicated above. The

appellant -Bank shall pay to each one of the respondents Rs. 250/ - towards costs in the appeal. Appeal allowed.

