
(2016) 11 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Case No : 2343 of 2013

STATE BANK OF INDIA

APPELLANT

Vs

DR. PUSHPAKALA R JIMULIA & ANR.

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Consumer Protection Act, 1986, Section 2(d), Section 21(b), Section 2(1)(d), Section 2(1)(d)(2) - Definitions - Jurisdiction of the National Commission - Def

Citation : (2016) 11 NCDRC CK 0033

Hon'ble Judges : B.C. Gupta

Advocate : Rajiv Kapur, Padma Priya, Udit Gupta

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 30.03.2013, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (hereinafter referred to as "the State Commission") in First Appeal No. FA/12/909, arising out of the order dated 25.05.2012, passed by the District Consumer Disputes Redressal Forum, Mumbai (Suburban) in Consumer Complaint No. 545/2008.

2. The facts of the case are that the complainants/ respondents are joint holders of a Bank account at Andheri Branch of the petitioner State Bank of India at Mumbai since 2005. The complainants stated that they were holders of 5900 equity shares of M/s. Tata Steel Ltd. In December 2007, the said Company came out with a Rights Issue and offered additional equity shares at the price of Rs. 300/- per share to the existing shareholders. The complainants made an application dated 17.12.2007 for allotment of 1180 shares of the Company, offered to them and issued a cheque bearing no. 836857 dated 17.12.2007 for Rs. 3,54,000/-, signed by complainant no. 2, Dr. R. G. Jimulia. The said cheque, when presented by the HDFC Bank, which was the collecting bank for the Rights

Issue, was dishonoured by the opposite party/OP Bank on 20.12.2007 on the ground that the signatures on the cheque did not match with the signatures of the account holder complainant. It is alleged in the consumer complaint that the said fact came to their knowledge, when they got their passbook updated after the closure of the aforesaid Rights Issue on or about 09.01.2008. In response to their letter sent to the OP, they received a reply on 10.01.2008 that the said cheque was dishonoured by their Central Processing Cell for the reasons "drawer's signatures differ". It is alleged by the complainants that the Bank did not give them any information regarding dishonour of the cheque, for which they were put to loss on account of non-allotment of shares under the Rights Issue. The complainant sent a legal notice on 25.03.2008 to the OPs to compensate them by paying Rs. 7 lakhs, being the market value of the shares on the date of dishonour of the cheque. The consumer complaint was then filed, seeking directions to the OPs to purchase 1180 shares of M/s. Tata Steel Ltd. and provide the same to the complainants @ Rs. 300/- per share, or in the alternative, to pay a sum of Rs. 7 lakhs alongwith interest @ 24% per annum to compensate for the loss suffered by them. The complainants also demanded a sum of Rs. 2 lakhs as compensation for mental agony etc. and Rs. 20,000/- as litigation cost.

3. In the written statement filed before the District Forum, the OP Bank denied the allegations against them, saying that after the cheque was presented for clearance by the HDFC Bank Ltd. with their Central Processing Cell, the specimen signatures of the complainants were compared with the signatures on the cheque and they declined to clear the cheque, as they found the signatures on the cheque different. The OP Bank returned the cheque to the HDFC Bank with a written memo, saying that the signatures were different. There was no deficiency in service on their part, rather the complainants should have been prudent to enquire about the clearance of their cheque, when they had made application for allotment of Rights shares. The OP Bank also stated that their Andheri (West) Branch was not involved in any manner in the whole process of presentation and dishonour of cheque.

4. The District Forum, while dealing with the consumer complaint, framed the following issues:-

"1. Does the complainant prove that on the part of the opp. party there was deficiency in service offered to the complainant with regard to the cheque?

2. Is the complainant a consumer of the opp. party as per Sec 2(1)(d)(II) of the Consumer Protection Act?

3. Final order"

5. After considering the averments of the parties, the District Forum concluded that there was deficiency in service on the part of the OP Bank, which had caused loss to the complainants by dishonouring the cheque in a wrongful manner. The District Forum based their conclusion on the report of a handwriting expert, from whom the complainants had got the specimen signatures compared

with the signatures on the cheque, and who had given the opinion that there was no difference between the two. However, on the second issue, the District Forum concluded that the transaction done by the complainants for obtaining allotment of shares under the Rights Issue was for a commercial purpose, and hence, the complainants could not be considered as consumers under Section 2(1)(d) of the Consumer Protection Act, 1986. The District Forum ordered the dismissal of the consumer complaint on the ground that the complainants were not consumers. Being aggrieved against the said order of the District Forum, the complainants challenged the same by way of an appeal before the State Commission, which partly allowed the same vide impugned order, and found the Bank deficient in rendering service to the respondent and directed them to pay an amount of Rs. 7 lakhs as compensation for mental agony and negligence on their part. Being aggrieved against the said order, the OP Bank is before this Commission by way of the present revision petition.

6. The learned counsel for the petitioner Bank vehemently argued that the said cheque had been issued by the petitioners for allotment of shares of M/s. Tata Steel Ltd. under the Rights Issue, which was a commercial purpose, and hence, the complainants did not fall under the definition of "consumer" under Section 2(1)(d) of the Act. The complainants were not even covered under the "explanation" of Section 2(1)(d) of the Act, as they nowhere stated that they had done the transaction for earning their livelihood by means of self-employment. The learned counsel has relied upon a decision of the Hon'ble Supreme Court in Morgan Stanley Mutual Fund vs. Kartick Das, as reported in 1994 SCC (4) 225, saying that the complainants were prospective investors with the motive of earning profit and hence, not consumers.

7. Referring to the merits of the case, the learned counsel pointed out that upon finding that the signatures of the account holder on the cheque in question did not match with the standard signatures kept in the Bank, the cheque was returned alongwith a memo to the presenting Bank. The scheme for making applications under the Rights Issue was to close on 09.01.2008. Had the complainants been vigilant, they had enough time to present another cheque, but that was not done. Referring to the report of the finger-print expert, Mr. Anil Kumar Mathur produced by the complainant, who had stated that the signatures on the cheque were genuine, the learned counsel stated that such expert opinion could not be relied upon, as opportunity was not provided to them to cross-examine the said expert. The learned counsel further stated that the Bank had also produced the report of an expert Nisha Menon, according to which, the signatures on the cheque were different from the admitted signatures. The learned counsel argued that in such matters, only the Civil Court of competent jurisdiction had the powers to adjudicate, whether the signatures were genuine or not. The learned counsel further stated that the consumer fora below had not given any reasons to arrive at the figure of compensation of Rs. 7.0 lakhs, although the amount stated in the cheque was only Rs. 3.54 lakhs. The report received from the broker in this regard had not been authenticated. The learned

counsel argued that there was no malafide intention on the part of the Bank to deny the payment of the cheque and hence, they should not be penalised for the same.

8. Per contra, the learned counsel for the complainant/respondent argued that the District Forum in their order dated 25.05.2012 had clearly brought out that there was deficiency in service on the part of the Bank in denying the payment of the cheque and resultantly, financial loss had been caused to the complainant. The District Forum dismissed the complaint, however, taking the plea that the complainant did not fall under the definition of consumer. Since the finding arrived at by the District Forum regarding deficiency in service on the part of the Bank had not been challenged by them by way of any appeal/revision petition etc., it was clear that the Bank had accepted the verdict of the District Forum, in so far as deficiency in service on their part was concerned. The Bank had, therefore, no right to challenge that part of the order, because it had attained finality. The learned counsel further argued that the complainant and his wife were joint holders of the account opened in the Bank, in which, the wife was the first account holder. The cheque in question was however signed by the husband, Dr. R. G. Jimulia, who is the second account holder. The confusion probably arose, because the concerned official of the Bank compared the signatures on the cheque with those of the first account holder and decided to return the cheque. Referring to the report of the finger-print expert, the learned counsel stated that the expert Mr. Anil Mathur, produced by them, had clearly stated that the signatures were identical. The OP had never made a request for cross-examination of the said expert. Referring to the report of the handwriting expert produced by the Bank, Nisha Menon, the learned counsel stated that the said report was dated 29.05.2013, meaning thereby that the Bank procured that report, even after the passing of order of the State Commission. The said report was therefore not relevant for the purpose of deciding the present revision petition. The learned counsel has drawn attention to the signatures on the cheque and the account opening form kept in the Bank, saying that it was absolutely clear that the signatures were identical, even when seen with naked eye. Referring to the written memo, the learned counsel stated that the same had been sent by the State Bank of India to the HDFC Bank and hence, the complainant did not have any information that their cheque had been returned. They came to know about the dishonour of the cheque only on 09.01.2008 when they got their passbook updated. Replying to the arguments of the Bank that the complainant was a prospective buyer, the learned counsel stated that they were the existing share-holders of the Company and they had applied for getting additional shares in the Rights Issue; hence, it was not correct to say that they were prospective buyers. The learned counsel further stated that the complainants did fall under the definition of consumer, because the matter was essentially between them and their Bank and they had availed services from the Bank by opening an account with them. Referring to the amount allowed to them by the consumer fora below, the learned counsel stated that as per certificate

from stock broker, the price of the share in question had gone upto Rs. 610 per share and hence, compensation of Rs. 7 lakhs had been rightly allowed to them.

9. In reply, the learned counsel for the petitioner has drawn attention to the points taken by them in the written arguments presented before this Commission, which are on the file.

10. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

11. The first point that requires consideration in the matter is whether the complainants fall under the definition of "consumer" as per section 2(d) of the Consumer Protection Act, 1986. The petitioner Bank have taken the plea that being applicants for the allotment of shares of a Company, the complainants did not come under the definition of "consumer", as stated in the judgments relied upon by them and as brought out in the order passed by the District Forum. In the present case, the complainants are maintaining a regular savings bank account with the OP Bank since 2005, and the said fact has not been denied by them. It is clear, therefore, that they have been availing themselves of the services provided by the Bank and hence, they are consumers vis-a-vis the Bank. The present case involves the dishonour of a cheque on the ground that the signatures on the said cheque did not tally with the signatures maintained by the Bank. In this kind of situation, it is evident that the purpose for which the cheque was issued, does not carry any relevance, rather the main issue is whether the cheque was dishonoured in a rightful manner or not. An account holder having a savings bank account may issue a cheque for any purpose, whether commercial or non-commercial. It would not be fair to conclude that if the cheque was issued for a non-commercial purpose, the savings bank account holder will be branded as a consumer, but if the cheque is for commercial purpose, he will not come under the category of consumer. This will obviously be quite an absurd situation. It is held, therefore, that since the complainants were joint holders of a savings bank account with the Bank, they are definitely covered under the definition of consumer vis-a-vis the Bank.

12. Further, the contention of the Bank that the complainants were prospective investors in the shares, is also not valid, because they were already the shareholders of M/s. Tata Steel Ltd. and the present application was being made to get additional shares in the Rights Issue of that Company. It may further be stated that this Commission in the order passed in the Consumer Complaint no. 137/2010, Kavita Ahuja vs. Shipra Estate Ltd. & Jai Krishna Estate Developers Pvt. Ltd. and other matters on 12.12.2015, observed as follows:-

"A person having surplus funds available with him would not like to keep such funds idle and would seek to invest them in such a manner that he gets maximum returns on his investment. He may invest such funds in a Bank Deposits, Shares, Mutual Funds and Bonds or Debentures etc. Likewise, he may also invest his surplus funds in purchase of one or more houses, which is/are

proposed to be constructed by the service provider, in the hope that he would get better return on his investment by selling the said house(s) on a future date when the market value of such house (s) is higher than the price paid or agreed to be paid by him. That by itself would not mean that he was engaged in the commerce or business of purchasing and selling the house (s)."

13. Relying on the judgment made in the case above, it is apparent that the complainants cannot be held to be non-consumers, but as stated already, even if the cheque was issued for a commercial purpose, the basic issue concerning the dishonour of the cheque by the Bank has to be adjudicated independently.

14. Now, dealing with the main issue of dishonour of the cheque in question, it has been stated by the petitioner Bank that the said cheque was returned to the presenting Bank i.e. the HDFC Bank with a written memo. The petitioner stated that it was not their duty to provide intimation independently to the complainant about the dishonour of the said cheque. Moreover, the cheque had come for clearance to their Central Processing Cell, from where it was returned to the collecting Bank. The branch in question did not have any role in the dishonour of the cheque and hence, no deficiency in service could be attributed to them.

15. In this regard, it is not disputed that the cheque was returned to the HDFC Bank with a written memo on the plea that the signatures of the complainant on the said cheque did not match with those maintained in the record of the Bank. There are two reports given by two different finger-print experts on the issue of the said signatures. The expert produced by the complainants says that the signatures on the cheque did tally with their standard signatures, whereas the expert produced by the Bank gives an opposite version. In this kind of situation, it is difficult to place reliance on either of the two reports. However, the natural implication/presumption that emerges after considering these two conflicting reports is that doubt could have developed in the minds of the dealing officials of the petitioner Bank, in so far as the authenticity of the signatures on the cheque was concerned. In their good judgment, the said official may have decided to take the safer path and decided to return the cheque, rather than honouring the same. It has nowhere been alleged or proved that there was any wrong intention on the part of the said officials that they decided to dishonour the cheque, which proved harmful to the interest of the complainants. It is made out, therefore, that the said officials may have decided to err on the side of caution. In the other possible scenario, it can be stated that had these officials decided to clear the cheque and that later on, the signatures on the same were found to be non-genuine, the Bank would have been saddled with the responsibility of providing compensation to the complainants for wrongfully honouring the said cheque. Further, the contention of the petitioner Bank that the complainants could also have exercised greater caution/vigilance to ensure that the cheque was duly encashed, is based on sound reasoning as time was available to them till 09.01.2008, when the said Rights issue was to close.

16. Based on the forgoing discussion, it is held that the action of the officials of

the petitioner Bank in dishonouring the said cheque did not amount to deficiency in service on their part. It could best be termed as an error of judgement, but in the absence of any evidence of wrongful intention on the part of these officials, the Bank is held not liable to be penalised for the dishonour of the cheque.

This Revision Petition is, therefore, allowed and the orders passed by the consumer fora below are set aside. Consequently, the consumer complaint stands dismissed. There shall be no order as to costs.