**(1996) 10 NCDRC CK 0061**

**In the National Consumer Disputes Redressal Commission**

State Bank of India APPELLANT

Vs

S.R. BALE RESPONDENT

**Date of Decision :** 17-10-1996

**Acts Referred:**

**Citation :** 1996 3 CPJ 128 : 1996 3 CPR 200 : 1997 1 CLT 400 : 1997 1 CPC 146

**Hon'ble Judges :** V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi , S.P.Bagla J.

**Final Decision :** Appeal dismissed

## Judgement

1. NINE complainants jointly filed a complaint against the State Bank of India-first opposite party, Sachin Chandi of Andheri of Bombay-second opposite party, Hitesh C. Sanghani-third opposite party and M / s. Otis Elevator Co. (I) Ltd.-fourth opposite party, alleging deficiency in service against the opposite parties. The Maharasthra State Commission by its order dated 4th June, 1993 allowed the complaint and made opposite party Nos. 1 & 2 and 3 jointly and severally liable to pay to the complainants the amounts shown in Table No. 2 of the complaint besides costs of Rs. 500/-. This First Appeal by the State Bank of India is directed against this decision of the Maharashtra State Commission.

2. THE complainants alleged in the complaint that they had booked various consumer durables as indicated in Table No. I, with the opposite party No. 2 under the "Big Buy Scheme" of the State Bank of India, opposite party No. 1. It is pleaded that Mr. Sachin Chandi and Mr. Hitesh C. Sanghani-opposite party Nos. 2 and 3 represented to the complainants in the month of October, 1990 that they would be able to organise loans for the purchase of consumer durables for the complainants and other employees of Otis Elevators through the State Bank of India''s "Big Buy Scheme", that opposite party Nos. 2 and 3 represented to them that they had simply to sign on the forms of the State Bank of India and to hand over the salary slips and rest of the formalities with the opposite party Nos. 1 and 4 would be taken care of by opposite party Nos. 2 and 3, that the opposite party Nos. 2 and 3 also arranged among the employees to sign as guarantors for

each other, that the guarantee froms were blank when the signatures of the guarantors were obtained, that the forms presented for the guarantors signatures were only initialled by the loaners and that opposite party Nos. 2 and 3 explained that they were obtaining signatures of the guarantors on the blank forms with a view to expedite formalities with the opposite party Nos. 1 and 4 enabling the second opposite party to deliver the goods to all the complainants latest by Diwali of that year. THE complainants were further told that their employer-opposite party No. 4 had agreed to deduct the monthly instalments as fixed by the opposite party No. 1 from the monthly salary and to remit the same to the opposite party No. 1. It is then alleged that having signed all the requisite papers, the complainants were eagerly awiting the delivery of the goods booked by them under the "Big Buy Scheme" prior to Diwali but the opposite party No.. 2 failed to keep up his promise and failed to deliver the goods booked by the complainants. It is further pleaded that in December, 1990 the complainants found that monthly instalments were being deducted from their salary although none of the complainants had received any goods from the opposite party No. 2. THE complainants further alleged that they took up the matter with the first opposite party and the fourth opposite party as well as with the second and third opposite parties for cancellation of the loans and for the refund of the instalments deducted by their employer towards the loan. THE complainants alleged to have issued several notices and ultimately filed the complaint before the Maharashtra State Commission alleging deficiency in service of the opposite parties and claiming the relief of a direction to the first opposite party to refund the amounts unjustly and unfairly collected from the complainants with interest at the relate of 18% per annum and for a direction to the fourth opposite party to forthwith stop future collections of instalments from the complainants. THEy also claimed relief of grant of compensation against the opposite parties besides costs of the complaint. Notices were issued to the opposite parties. The State Bank of India and M/s. Otis Elevators Co. filed their written versions. The second opposite party and the third opposite party remained absent though duly served. It appears that State Bank of India did not appear on 21st April, 1993 the date fixed for hearing of the complaint and was proceeded ex-parte. The Counsel for the State Bank of India however, made his submissions after the case was closed for orders and the State Commission has recorded this fact. The version of the State Bank of India is that the complainants applied to the Bank for a loan under what is called the "Big Buy Scheme" introduced by the Bank for the purpose of financing money to mostly salaried employees for purchasing high value consumer durables like T. V. sets, VCRs, washing machines etc. The repayment of the advance for the loan was ensured by the concerned employer taking the responsibility for the payment of the agreed instalments to the Bank on behalf of their concerned employees. It is pleaded that in this case the fourth opposite party vide its letter dated 26th July, 1990 wrote to the Bank to extend the said scheme to their employees with various liberalisations. In the said letter it was specifically stated by the opposite party No. 4 that opposite party Nos. 2 and 3 running their business in the name and style of Neelima Enterprises were their authorised dealers to supply consumer durables to their employees. According to the Bank the loans were sanctioned and disbursed by the Bank to the said dealer on behalf of the concerned buyers (complainants) after receiving a number of documents, inter alia, applications from the complainants, hypothecation agreement, guarantee agreement from third party, authority letters singed by the complainants authorising the employer to deduct from their salary the monthly instalments as fixed and to remit the same to the Bank towards repayment of the loan, the copy of the challan of the dealer with the acknowledgement of the complainants-or their family members for having received the consumer durables booked by them with the dealer and the authority letter signed by the complainant to hand over the cheque towards the disbursement of the loan amount to the said dealer. It is then pleaded that the repayment of loan commenced by the opposite party No. 4 remitting to the Bank the instalment amounts deducted by it from the salary of the concerned employees between January, 1991 and March, 1991. It is pleaded that it is only on 18th June, 1991 that the complainants approached the Bank complaining that the goods stated to have been delivered, for which the delivery acknowledgements were given to the Bank, were not in fact executed by the complainants as no goods were received and a request was made to the Bank not to collect the instalments from the opposite party No. 4. It was pleaded that the complainants had filed a complaint with the police alleging fraud by the second and third opposite parties. The Bank pleaded that there was no deficiency in service by the Bank so as to attach the provisions of the Consumer Protection Act, 1986 as the Bank only disbursed the loans to the complainants for the goods purchased and the amount of loan was repayable by instalments after the same was deducted by the 4th opposite party under the authority given by the complainants to their employer.

The State Commission after noticing the respective versions of the parties to the complaint, recorded it as an admitted fact that the amount shown in Table No. 2 attached to the complaint had been paid by the first opposite party to the second opposite party. The State Commission also noticed the allegations of the complainants that they had been cheated by the second and third opposite parties and it opined that opposite party No. 1 actively supported in making the necessary payments from the complainants'' accounts and thus it was clearly the case of fraud and it had been practiced by the second and third opposite parties in which the State Bank of India actively lent its support. The State Commission came to the conclusion that there is deficiency in service as promised by the opposite party Nos. 1 to 3 and therefore they are liable to compensate the complainants for the loss. With this finding the opposite party Nos. 1 to 3 were made jointly and severally liable to pay to the complainants the amount shown in Table No. 2 of the complaint within 30 days from the receipt of the order besides costs of Rs. 500/-.

3. WE have heard the learned Counsel for the appellant and the Authorised Representative of the complainants and have also gone through the records.

 

There is no dispute to the fact that by letter dated 26th July, 90, the 4th opposite party stated that its employees were interested in "Big Buy Scheme" of the Bank and that M/s. Neelima Enterprises, Andheri (WEst) of which opposite party Nos. 2 and 3 are the partners, were its authorised dealers to supply the consumer durables to the employees of the 4th opposite party. That letter also contains requests to the Bank to consider granting 100% as loan i.e. without any margin money instead of 75% cost of consumer durables. It is clear that the second and third opposite parties were known to the complainants as also their employer before the proposal was put to the Bank. The State Bank of India cannot be faulted for not checking the antecedents of the second and third opposite parties for it had no reason to suspect or doubt the bonafides of M/s. Neelima Enterprises of which the second and third opposite parties are partners. There is also no dispute that the amounts shown in Table No. 2 attached to the complaint had been paid to the second opposite party by the first opposite party by way of disbursement after the Bank obtained, (i) applications from the complainants, (ii) execution of hypothecation agreement, (iii) D.P. note and D.P. note delivery letter wherever applicable, (iv) execution of guarantee agreement from third party, (v) salary slips, (vi) determination of monthly instalments payable by the complainant towards repayment of loan, (vii) authority letter signed by the complainants authorising opposite party No. 4 to deduct from their salary the monthly instalments as fixed and to remit the same to the Bank towards repayment of the loan to the first opposite party, (viii) copy of the challan of the dealer with acknowledgements of the complainants or their family members for having received the consumer durables booked by them with their dealer, and (ix) authority letters signed by them to hand over the cheque towards disbursement of loan amounts to the said dealer. The complainants do not dispute the execution of these documents except the challans of the dealers with acknowledgements of the complainants or their family members. The complainants alleged that these challans of the delivery of the articles are forged and do not bear the signatures of the complainants or any members of their family, but this assertion was made belatedly in June, 1991. The Authorised Representative of the complainants invited our attention to a statement marked as Annexure-8 to the complaint showing the date of loan application, date of sanction of loan, the date of payment of cheque by the Bank and date of so-called delivery and socalled receipt of goods in respect of all complainants. It is argued that there are serious discrepancies as the date of sanction in some cases is later than the date of payment of cheque. We cannot rely upon the statement made in Annexure-8 to the complaint as the Bank has given the details of acceptance of articles, the dates of disbursement of loan and the date of receipt of first instalment in their written version. There may be some difference in the dates but they are wholly immaterial in so far as the authenticity of the documents of the transactions between the Bank and the complainants particularly when the complainants do not deny the signatures on the documents executed by them. Persons do not execute documents and append their signatures unless they intend to bind themselves to the terms and conditions contained in that document. The complainants are thus bound by the documents executed by them in favour of the Bank.

4. IT is the complainants own case that the goods were to be delivered to the complainants before Diwali. If the goods had not been delivered by the opposite party Nos. 2 and 3 and had not been received by the complainants or their family members by Diwali, then the complainants ought to have brought the non-delivery to the notice of the State Bank of India immediately or at least before the disbursement of the loan amounts. The opposite party No. 4 commenced the deduction of the instalments towards the repayment of loan and remitted the instalments to the Bank of the amounts deducted from the salary of the concerned employees from January 1991 to March, 1991. IT is only on 18th June, 1991 that the complainants for the first time approached the Bank alleging non-delivery of the goods. The grievance of the complainants in the complaint is that Mr. Sachin Chandi, the opposite party No. 2 had been absconding since May, 1991 and if the first opposite party had taken up the complaint of the complainants with the Police Authority, Mr. Sachin Chandi would have been apprehended. The case set up in the complaint was that first opposite party and fourth opposite party have abetted in the escape of the second opposite party thereby causing considerable financial loss and mental agony to the complainants. The complainants had not either pleaded nor established by cogent evidence that the State Bank of India was a party to the fraud or it actively lent its support in the practising of the fraud by the second and third opposite parties. The Bank had disbursed the loan on behalf of the complainants after the Bank obtained a set of nine documents from each of the complainants as noticed above. If the complainants did not obtain the delivery of the goods or had not executed the acknowledge-ments of having received the consumer durables booked by them with the dealer then they should not have waited till 18.6.91 when first communication was sent to the Bank. The complainants acquiesced in the instalments being deducted from their salaries from January, 1991 to March, 1991 and repaid to the Bank towards loan amounts. The State Commission without sufficient and cogent evidence erred in recording the observation against the State Bank of India of lending its-support. The Bank duly received the copies of the challan of the dealer with the acknowledgements of the complainants or their family members for having received the consumer durables booked by them with the second opposite party and it is only thereafter that the amount was disbursed in pursuance of the authority given by the complainants to hand over the cheque towards the disbursement of the loan amount to the said dealer. The appellants acted according to the mandate of the complainants and thus there is no deficiency in service in disbursing the loan amount to the dealer, opposite parties Nos. 2 & 3. None of the complainants disputed the receipts of the goods before the disbursement of the loan amount to opposite party Nos. 2 & 3. The non receipt of the goods was alleged for the first time in police report dated 7.6.91 and to appellant on 18.6.91. The State Commission in coming to the conclusion that the first opposite party had not

 

been vigilant, has gone beyond the case set up by the complainants. There is no deficiency in service on the part of the State Bank of India and it could not be made jointly and severally liable to pay any amount to the complainants alongwith the second opposite party and the 3rd opposite party. Before taking leave of this case, we may record that the alleged fraud is the subjectmatter of investigation by the Police in the criminal case. Any observation in favour of the State Bank of India will not stand in the way of criminal investigation or trial by the Competent Authorities either against opposite parties Nos. 2 & 3 or even the State Bank of India or its officials, if any. In the result the appeal is allowed, the impugned order dated 4.6.93 of the State Commission in so far as it had made the State Bank of India jointly and severally liable is modified and the complaint against the State Bank of India is dismissed. The parties shall bear their own costs throughout. Appeal dismissed.

 