(1992) 03 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT OF POST OFFICES — APPELLANT

Vs

SHAH CHAMPAKLAL CHUNILAL — RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:

Citation : 1992 2 CPJ 685

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal allowed

Judgement

1. THE respondent is the original complainant who filed a complaint before the District Forum, Kachchh contending that his firm M/s. Vaishali Cinema has obtained a National Saving Certificate by payment of R.s. 25,000/- on March 2, 1984. It is not disputed that the certificate were purchased by the firm in which both the respondent complainants are partners

2. IT also appears that the Post Office Anjar has issued N.S.C. Series VI issue for the period of 6 years and the interest payable was about 12% and the maturity value as agreed by both the parties is Rs. 50,375/-. That in pursuance of the summons issued by the District Forum the appellant opponent filed its version and raised two contentions viz. (1) that the complainants were-not consumers within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) and (2) that under the provisions of Rule 4 read with Rule 11 of the National Saving Certificate Rules, 1981 which are admittedly statutory the certificates cannot be purchased in the name of the firm. It can only be purchased in the name of individuals and if certificates are given in the name of firms they are-irregular within the meaning of Rule 11 and the rate of interest payable under the certificates will not be available to the complainant.

The District Forum rejected both the contentions of the appellant and passed an order directing the opponents to pay full amount with stipulated interest and interest 12% after the date of maturity with cost.

3. MS. Tiwari, the learned Counsel appearing on behalf of the appellants has reiterated the same submissions before us as raised before the District Forum. Since the matter can be disposed of by the 2nd submission we have not dealt with the first submission whether the complainants were consumers within the provisions of the Act or not. So far the second submission of MS. Tiwari is concerned she has submitted that the N.S.C. in Series VI cannot be purchased by the firm. It can only be purchased by an individual singly or jointly under the provisions of Rule 4. According to MS. Tiwari these rules are framed under the provisions of Government Saving Certificates Act, 1959 (46 of 1959) and, therefore, they are statutory. Therefore the certificates given under Series VI were on the face of it irregular. Ms. Tiwari, thereafter drew our attention to Rule 11 having the caption ''Irregular holding''. The Rule being material is reproduced hereunder: (1) Irregular holding:- (1) any certificate purchased or acquired in contravention of these rules shall be encashed by the holder as soon as the Act of the holding being in contravention of these rules is discovered and no interest shall be paid on any holding in contravention of these rules. (2) If any interest has been paid on any holding which is in contravention of these rules, it shall be forthwith refunded to the Government failing which the Government shall be entitled to recover the amount involved from any money payable by the Government to the investor or as an arrear of land revenue.

Relying upon this provision of Sub-rule (1) Ms. Tiwari vehemently argued that the certificate has been issued strictly in contravention of Rule 4 of this Rule and, therefore, it being an irregular holding the holder of the certificate is entitled only to the principal amount and not entitled for any interest. She has further argued that Sub-rule (2) itself shows that even if the payment is made by mistake in contravention of the Rule the same shall have to be refunded and failing which the Government was entitled to recover the said amount from the investor as arrears of land revenue.

4. MR. B.Y. Mankad, the learned Advocate appearing on behalf of the Respondent No. 1 has strongly relied upon the decision of the District Forum. His argument is that if the investor is not knowing the post office rules the person who issued the certificate was an employee of the Post Office. Thereafter the certificate must have gone from various levels upto the higher authorities and possibly to the auditor. The Post Office kept complete silence, though it can be well assumed that this fact might have been discovered by the Post Office. According to MR. Mankad the silence of the Post Office was suggestive of the bad intention not to pay interest and take advantage of the Rules. He, therefore, vehemently urged that the decision given by the District Forum should be upheld which is just and equitable. We have no doubt that the decision is just and equitable. The question therefore arises is whether the Forum or the Commission has any jurisdiction to give a judgment however moral or equitable it may be against the provisions of the Statutory Rules. If the COMMISSION or the Forum wants to pass an order for interest it shall have to declare the rules to be bad, ultra vires and illegal and not enforceable against the bonafide purchaser. We regret that we cannot do so. No

such power is conferred upon the COMMISSION which is a creation of statute. To get this relief the complainant has to approach the High Court or the Supreme Court. We are strongly of the opinion that the people rely upon Government authorities and Government blindly. They have an implicit and full trust in the Government and Government ought not to have raised such pleas especially when full term of 6 years have already been completed. It may also not be forgotten that the employee who has given this certificate was also at fault. He appears to be ignorant of the rules. However, whatever may be our sympathy, as we have stated earlier, we cannot grant any relief. We shall have therefore to allow the appeal on this ground. Mr. Mankad however refers to the communication of the Sub-Post Master, Anjar dated 29.3.90 wherein the Post Master has offered to regularise the certificates by converting the same into 7 NSC/ II issue which fetches little lower rate of interest and longer time.

5. MR. Mankad on behalf of the respondent wants to accept the offer to regularise the transaction by converting into 7 NSC/II issue which can be purchased by the firm. According to MR. Mankad the Post Office ought to have given 7 series instead of 6 series when the purchase was by a firm. Ms. Tiwari fairly accepted the offer of the respondent and agrees that the certificate will be converted into 7 series and the payment will be made to the respondent in accordance with the provisions of 7 NSC/II issue, in accordance with law.

6. WE are, therefore, of the opinion that this is a fit case in which such regularisation should be made and the payment of the certificate should be made immediately so that the respondent-cornplainant may not suffer further loss of interest. WE are told by Mr. Mankad that the maturity was on 2.3.91. There also one year has passed. WE, therefore, recommend that the Government of India will consider the case of the complainant for further interest from the date of maturity taking the facts and circumstances as stated above into consideration. The appeal is, therefore, allowed. The following order is passed. ORDER The appeal is allowed. The decision of the District Forum, Kachchh is set aside. The stay granted by this Commission is vacated. The appellant shall convert the NSC 6 series into NSC 7/II issue and make the payment accordingly and since the maturity date has expired the appellant shall send the case for consideration for further interest to the Government of India. The payment of 7 NSC/II issue shall be made within 2 weeks from today. In the circumstances there will be no order as to costs. Appeal allowed.

