(1994) 07 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

SYNDICATE BANK And OTHERS-s APPELLANT

Vs

BORROWERS RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Citation : 1994 2 CPC 630 : 1994 3 CPJ 425 : 1994 3 CPR 161 : 1995 1 CLT 290

Hon'ble Judges : P.K.Shamsuddin , C.G.Sethu Lakshmi , K.Balakrishnan Nair J.

Final Decision : Appeals allowed

Judgement

1. IN these appeals a common question arises and therefore they are heard and disposed of together. The complainants in these cases are loanees for agricultural purposes from different banks. The complainants alleged that they are eligible to the benefit of the Agricultural Rural Debt Relief Scheme (ARDR Scheme) introduced by the Government of INdia. Under the scheme certain categories of debtors are eligible to get their debts upto a limit of Rs. 10,000/- wiped off and the Government of INdia undertook to reimburse the bank for the consequent loss to the banks. Appeal Nos. 591/ 92, 328, 440, 656, 660, 697, 721, 898, 959, 962, 1008, 1010 & 1053/1993, 419, 420, 421 and 432/ 1994 are filed by Banks contending that the complainants are not consumers in relation to the relief granted under the scheme. It was also contended in those Appeals, that the complainants are not eligible to get the benefit of the scheme. Appeal No. 406/1994 is filed by the complainant contending that though they are wrongly denied the benefit of the Scheme by the respective District Forums. There cannot be any doubt that complainants as loanees from the Bank, have to pay interest on the amounts borrowed from the Bank and this will form consideration and the complainants will be consumers and they will be entitled to all services that are normally available to a debtor from the Bank. Learned Counsel appearing for the Bank argued that the question to be considered is whether the service of making available the benefits under the Scheme is a service hired or availed of for consideration by the complainants as consumers. IN other words is it a part of the service that is normally rendered by a Bank to a borrower for consideration received by the Bank? It is also to be examined whether the relief granted such

as in this case is a service within the meaning of Consumer Protection Act. IN order to appreciate the contention of the parties, it is necessarily to refer to some important provisions in the scheme.

2. SECTION 3 of Chapter II of the scheme provides that Public Sector Banks and Regional Rural Banks shall provide debt relief to a borrower of eligible loan, sum of which does not exceed Rs. 10,000/-. Section 4 lays down that the manager of each branch of the public sector bank or regional bank rural bank will have the authority to determine eligible loans and sanction waiver of the loans as provided Section 5. Sub-section 2 of Section 4 says that the manager of the lead bank in each of the block will act as a Co-ordinator for the implementation of the scheme and he would convene meetings of the managers of concerned branches of public sector banks, regional rural banks, central co-operative banks, land development banks and Block Development Officer/Tahsildar to (a) determine the total principal amount of loan taken by each borrower to ensure that it is not more than Rs. 10,000/- and (b) verify whether the village to which the borrower belongs has experienced bad crop year in terms of the Annewari system, subject to these two conditions being met, the debt relief to eligible borrowers will be provided automatically without any further reference to regional office/head office of banks or any other State/Central Government Authority.

Section 5 provides that if the waiver amount is sufficient to clear the outstanding principal and interest, such accounts should be closed and the borrowers advised in writing about the extent of relief provided and closure of the account. In cases where the principal and interest exceeds Rs. 10,000/- such borrowers should be advised about the relief provided to them and the balance outstanding in the account, and such borrowers should be advised to repay the balance amount. Sub-section 2 of Section 5 states: Credits may be given in the eligible accounts to the exent of outstanding principal and interest subject to the maximum of Rs. 10,000/- and the aggregate amount held in the account called "Recoverable from the Government under Debt Relief Schedule" till the amount received from the Reserve Bank/National Bank.

3. SECTION 6 provides that each public sector bank shall prepare and submit consolidated claim in respect of the amount of relief to the Reserve Bank for payment. In the case of Regional Rural Banks, such consolidated claim statement would be submitted to NABARD for payment. Section 8(1) states that the claim statements submitted to the Reserve Bank/NABARD shall cover interest due on the outstanding loan amounts only upto and inclusive of effective date and not beyond. Clause 2 of Section 8 provides that the interest that has accrued on the outstanding loan amounts after the effective date till the date of adjustment of the said loan as provided hereinafter shall be borne and paid to the financing bank by the beneficiary.

4. SECTION 9(1) further provides that "In order to maintain the liquidity of the Public Sector Banks and Regional Rural Banks a part of the claim amount will be disbursed in advance to them by the RBI/NABARD respectively as determined by

them. Such payments would be made from out of the funds received by RBI/ NABARD from Government of India. Clause 2 of SECTION 9 provides that subject to the payment made by the Government of India, the Reserve Bank/National Bank shall, as soon as possible, but not later than three months from the date of receipt of the claims, complete the payment of the full amount to the bank in respect of eligible loans after such scrutiny as it may wish to make. Section 2(g)(i) of the Scheme defines "Eligible Loan" as that part of the short term loans, including converted re-scheduled medium term loan, availed of by an individual borrower on or after 1st April, 1986, instalments of a term loan, falling due after 2nd October 1986 which was overdue to a bank as on the effective date and includes overdue interest. "Chronic overdues" has been defined in Section 2(g)(ii) as overdues including overdue interest, as on the effective date, of an individual farmer or artisan who had borrowed a loan or loans from one or more banks, the principal of which did not exceed Rs. 10,000/- for any agricultural or artisan activity and who had overdues aged more than 3 years as on the effective date.

5. THE object of the scheme was to give relief to agricultural debtors who were facing difficulties on account of drought, bad crop or other natural calamities and also to indebted artisans who in the opinion of the Government require support to tide over their financial difficulties.

6. TO bring a person within the ambit of Section 2(d) there must be purchase of goods for consideration or consideration promised or/ deferred under any system of payment or hiring or availing of service for such consideration. In this case no purchase of goods for consideration is involved. What is contended for is that there is hiring of service for consideration. In relation to hiring of service. Section 2(d)(ii) defines a consumer as person who hires or avails of any services for a consideration which has been paid or promised or party paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. Learned Counsel Sri Kalkura, Sri Balakrishan and other Counsel appearing for the Banks contended rightly that by no stretch of imagination, it could be said that there is a hiring of service of the Banks for consideration in respect of the implementation of the scheme. All the complainants are agricultural debtors who have taken loans from the Banks. Learned Counsel submitted that at the time of entering into contract the nature of service involved in the instant case was not in the contemplation of parties. In regard to loan availed of from the bank, the consideration for service is in the nature of interest paid by the debtor to the bank. Learned Counsel conceded that the complainants in these cases are consumers of service of the bank in relation to the loans availed of by them as there is a promise to pay consideration by way of interest on the loan amount. That service is the one in the contemplation of the parties at the time when loans were advanced and no other service. Learned

Counsel argued that scope of service cannot be expanded so as to include in its ambit services not contemplated at the time of hiring of service and services not coming within the purview of the Act. Sri Kalkura and other learned Counsel appearing for the Banks are absolutely correct in submitting that the sort of service that is contemplated under the scheme was not in the mind of the parties when the complainants took loan stipulating to pay interest.

Learned Counsel invited our attention to the Law Lexicon of Sri P. Ramanatha Iyer, page 1102 1987 Edition where relief is defined as follows:- "The word "relief" in resolutions by a town making provision for the "aid and relief" of families of volunteer soldier, implied want, need or necessity on the part of the applicants, and indicated that the provision there made was charitable, and did not tend to give the applicant any vested right as under a contract." Learned Counsel also invited our attention to page 1125 of the same book where subsidy is defined as "Money contributed by State Government, institution or person in behalf of any special object". So also, the expression "concession" has been defined in the same book as "a grant, ordinarily applied to a grant of specific privileges by Government, a special privilege granted by Government, Corporation or other authority".

7. ON the basis of these definitions, learned Counsel argued that relief under the scheme is in the nature of charity and cannot be considered as a vested right. Learned Counsel conceded that if such right is created under the statute or some scheme of the Government that can be enforced through other machinery but so long as such right is not part of the contract of hiring of service for consideration, it cannot be enforced through the instrumentality of Consumer Courts. No doubt in the definition of service in Section 2(1)(o) "the provision of facilities in connection with the banking and financing" is included but if such services are rendered free of charge or under a contract of personal service they are excluded from the purview of the definition. This leads us to an examination of the question whether a provision for granting of relief to agricultural debtors in implementation of the scheme in regard to their debts is a service rendered for consideration or free of charge. The Counsel for complainants argued that a provision in a statute or an order validly made by the Government making provision to waive or scale down the agricultural debts and directing the bank to implement the scheme has to be considered as a service in connection with the banking. It is argued by Counsel for complainants that a provision for reimbursing the bank for the loss sustained by the bank can form consideration for such service. It is argued that it would be difficult in many cases if not impossible for the Bank to recover these amounts and so the arrangement to reimburse the bank for the amount so scaled down or waiver is definitely a great advantage for the banks. Learned Counsel for complainants also contended that the circumstance that consideration has flowed not from the complainants, but from NABARD or Reserve Bank or Government will not in any way alter the position, since the complainants are the beneficiaries of such service. It also does not matter such concession and benefits are conferred by Government on

agricultural debtors as a social welfare measure to them. To put it differently they contend that under the scheme, the service of the Bank to scale down or waive the loan or determine the persons who are eligible for loan is hired by NABARD, Reserve Bank or Government as the case may be and since the complainants are beneficiaries of such service, they squarely fail within inclusive clause of Section 2(d)(ii). They alternatively contended that "service" rendered by the Bank being one in connection with the loan, the consideration in the form of interest on the debt enjoyed by the Bank can be treated as consideration for this service as well.

8. LEARNED Counsel appearing for the Banks has placed before us the decision of the National Commission in 1991 (1) CPR 241. It was held by the National Commission that a person who goes and receives medical treatment in the Medical College Hospital is not a consumer as the service is not rendered for consideration. In Gr. Capt. D.W. Chauhan v. Air Force Naval Housing Board in 1993 (1) CPR 51, the State Commission of Delhi considered the question whether any service rendered as a welfare measure would fall within the purview of service known trade or commerce and answered in the negative. Learned Counsel also placed great reliance on the decision of State Commission, Haryana in Haryana Financial Corporation of Giandigarh v. M/s. Jamna Dass Cotton Mills of Hani, 1994 (1) CPR 311. In that case the grievance of the complainant was the grant of subsidy by the Central Government for industrial units to be set up in selected backward areas is not granted to the complainant. The complainant''s case was that lured by the incentive of the Central subsidy he had to spend a huge amount for setting up the mill in the desired location and it was obligatory on the part of the Haryana Financial Corporation to release the same. It was contended the delay has resulted in substantial financial loss to the complainant. It is in that context the Haryana State Commission considered the question whether the grant of subsidy by the Central Government comes within Section 2(1)(o) of the Consumer Protection Act. The Central Government did not grant extention for continuation of the scheme and therefore the subsidy could not be released to the complainants. The Commission took the view that Central subsidy is not a service, nor could the complainants hire such a service or pay any consideration therefor to come within the purview of consumer jurisdiction. The same question arose before the Punjab State Commission in M/s. R.K. Industries v. The Director of Industries and Another (1994 (1) CPR 516). It was contended that the grant of subsidy by the State or Central Government intended for the development of the backward areas is not a service and this contention was upheld by the Punjab State Commission. It was observed: "Inevitably, the grant of this subsidy is in the discretion of the Central Government and it is disbursed through the concerned State Governments and their industries Departments. There is no flexible vested right in any one to lay claim thereto, is manifest from the scheme which is temporary in nature and is extended from time to time."

9. THE National Commission had occasion to consider somewhat similar question in M/s. Sawhney Export House Pvt. Ltd. v. Noida & Others, III (1993) CPJ 337

(NC)=1993 (3) CPR 407. THE National Commission disposed ''of two complaints by a combined order in that case. In one case the complainant acquired 3900 square meters of plot in Noida in 1979 for establishing a unit for production of garments for export. According to the complainants it was entitled to a subsidy of 15% on the total capital of Rs. 36 lakhs including the cost of land, building and machinery. THE amount of subsidy worked out to Rs. 5.41 lakhs. In the petition the complainant claimed that he should be charged only interest at 10.5% instead of 16.5% as it was informed by the IDBI. He further contended that he was a victim of 1948 riots and charging of penal interest on the amount of loan taken from State Financial Corporation is contrary to the Government of India policy. THE question whether subsidy offered to be paid or rescheduling of loans and relief in interest was service as defined in the Consumer Protection Act was considered by the National Commission. In dealing with question, National Commission observed as follows :- "Subsidy offered to be paid is not service as defined in the Consumer Protection Act. Rescheduling of loans and relief in interest thereon is also not a service which a party or financial institution renders to the loanee. It is in the nature of an accommodation and concession to a party. Any interest chargeable on loans is a matter of contract between the lender and the borrower. We, therefore, fail to see how either of the complaints can be maintained under the Consumer Protection Act."

10. SRI Raghavan Pillai, learned Counsel appearing for the complainants submitted that the complainants had no case that subsidy or concession is a service within the meaning of Act. As indicated above learned Counsel submitted that the Banks have advanced loans to the complainants on interest. Section 3 of the scheme evolved by the Government of India provides that public sector banks and regional rural banks shall provide debt relief to a borrower of eligible loan of a sum which does not exceed Rs. 10,000/-. Section 4 provides that the manager will have the authority to determine eligible loans and sanction waiver of the loans as provided in Section 5. The scheme is enforceable. A mandatory direction is given to the bank to provide relief to a borrower of eligible loan and the manager of each branch of the public sector bank or regional rural bank has the authority to determine eligible loans and sanction waiver of the loans as provided in Section 5. Learned Counsel submitted that this duty is closely linked with the service to be rendered to the loanee by the bank. For doing this service the amount waived is reimbursed by NABARD, Reserve Bank or Government of India as the case may be. This undertaking would form consideration for the service supplied and the complainants who are beneficiaries to this service are consumers within the meaning of Section 2(o) of the Consumer Protection in view of the inclusive clause contained therein bringing into the fold of definition of consumers, the beneficiaries as well. At the first blush, this argument seemed to be attractive, but in the light of the principles enunciated by the National Commission and considering the observations contained in the decision cited above, it would be difficult to hold that the service rendered by the bank for the purpose of applying the scheme to individual cases or to give relief intended to

agricultural debtors would be a service within the meaning of Section 2(1)(o) of the Consumer Protection Act. The foregoing discussion would show that the service rendered by the bank in the matter of granting relief under the scheme is not a service which would come within the purview of the Consumer Protection Act. It follows that the complaints are not maintainable. It means that the appeals filed by the Banks have to be allowed and the appeal filed by the complainant has to be dismissed. In the result we allow Appeal Nos. 591 /92, 328,440, 656, 660, 697, 721, 898, 959, J62, 1008, 1010 & 1053/1993, and 419, 420, 421 and 432/ 1994, and dismiss Appeal Nos. 406/1994. We direct the parties to bear their respective costs in the peculiar circumstances of the case. Appeals allowed.