(1996) 06 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

UNION BANK OF INDIA — APPELLANT

Vs

SEPPO RALLY OY — RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Citation : 1996 2 CPC 450 : 1996 2 CPJ 128 : 1996 2 CPR 221 : 1997 1 CLT 75

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. THIS first appeal is directed against the Order dated 21.7.93 passed by the Delhi State Commission accepting the complaint and directing the opposite party to pay an amount of pound 11,234 with interest at the rate of 15% per annum from the date of complaint i.e. 27.5.92 till the date of the payment besides costs of Rs. 2,500/ -.

2. THE facts in the complaint may briefly be noticed. M/s. Dany Dairy & Food Engineers Ltd., the third opposite party before the State Commission entered into an agreement with M/s. Sappo Rally OY (complainant) on 14.12.88 whereby the third opposite party agreed to supply two evaporator systems valued at Rs. 25,98,473/ - within a period of four months from the date of the order. Under the agreement the complainant paid 100% advance payment to the third opposite party in Pound Sterling subject to the condition that they would furnish Bank guarantee for the amount of advance. The third opposite party obtained Bank guarantee dated 19.12.88 from the Union Bank of India (opposite party No. 2 a branch of the Union Bank of India) and furnished the same to the complainant. The contract was partially executed and in consequence thereof the Bank guarantee stood reduced to Rs. 10,53,735/ - to cover the value of the goods not supplied. The Bank guarantee was extended from time to time and the last extension was upto 31st December, 1989. The com - plainant invoked the Bank guarantee on 19.12.89 and asked the Bank to pay to them Rs. 10,53,753/ - equivalent to £39,000 in consequence of the default of the third opposite party in fulfilling the contract. After obtaining the permission of the Reserve Bank of India, a Bank draft for £29,062 was handed over on 4.3.91 to the complainant.

The complainant alleged that he had invoked the Bank guarantee and called upon the Bank on 10.12.89 to pay £39,000 equivalent to Rs. 10,53,735/ - but the Bank short paid £9,938. The complainant alleged that all payments were to be made by the complainant in fulfilment of the performance guarantee and since the delay was occasioned due to wilful lapse of the Bank, therefore, there is deficiency and negligence in service which the Bank was duty bound to perform in due course of business with care and prudence. After the receipt of the amount, the complainant filed a complaint alleging deficiency in service and prayed that the bank be directed to pay the amount £9,938 alongwith interest at the rate of 18% per annum from the date of invocation of the Bank guarantee till the date of the actual payment. The appellant herein raised preliminary objections relating to the territorial jurisdiction of the Delhi State Commission to entertain the complaint, whether a beneficiary under the Bank guarantee can be termed as consumer qua the issuing Bank within the ambit of the Consumer Protection Act, 1986 and whether the guarantee executed was agreed to be discharged in Pound Sterling. It is also pleaded that the complainant gave an unconditional and clear discharge and received the Bank draft for £29,062 in full and final settlement and is estopped in law and not entitled to maintain the complaint. In rejoinder the complainant alleged that there was never any satisfaction and accord within the true meaning of these phrases either under the Contract Act or under the General Law and the complainant was put under duress by the Bank which desired to devour the funds.

3. THE State Commission came to the conclusion that it had territorial jurisdiction to entertain the complaint as the Bank guarantee was furnished by the third opposite party who is a necessary party to the present proceedings, to the complainant at Delhi. The contract between the third opposite party and the complainant in pursuance of which Bank guarantee was given took place at Delhi and thus a part of cause of action arose at Delhi. The State Commission also rejected the contention of the Bank that the complainant is not a beneficiary from the third opposite party. The Bank guarantee was furnished by the third opposite party to the complainant and thus the latter availed of this guarantee with the consent of the former. The complainant was held to be a beneficiary and falls within the definition of the word consumer as defined in Section 2(1)(d)(ii) of the Act. The State Commission after considering the facts and circumstances of the case came to the conclusion that the amount was to be paid by the Bank in Pound Sterling under the Bank guarantee. The State Commission then determined the amount payable to the complainant. The State Commission took the date as 20th January, 1990 after one month of the invocation of the Bank guarantee and on which date the exchange rate was Rs. 28.20. The State Commission held that the complainant became entitled of £37,366 whereas only £29,062 were paid and thus the complainant was held entitled to the balance amount of £8,304. The complainant was also granted interest from 20.1.90 to 27.5.92, the date of filing of the complaint. The complaint was allowed directing the Bank to pay an amount of £11,234 with interest at the rate of 15% per

annum from the date of the complaint i.e. 27.5.92 till the date of payment besides costs of Rs. 2,500/ -.

4. THE main submission of the learned Counsel for the appellant is whether a beneficiary under a Bank guarantee can be termed as a Counsel qua the issuing Bank within the ambit of the Act. In our view the complainant is a beneficiary as the Bank guarantee has been procured for his benefit and protection. The Bank guarantee constitutes an agreement between the Bank and the complainant under which there is an absolute obligation of the Bank to make the payment to the complainant on a demand from the complainant if any of the eventualities mentioned in the Bank guarantee as regards the amount due and payable by the Bank arises. The Bank guarantee is a definite undertaking on the part of the Bank and constitutes an engagement of the Bank to pay to the complainant merely on demand. The Bank has assumed liability and responsibility to satisfy directly the claim of the complainant. Thus an independent contract has been created between the Bank and the complainant by reason of the Bank undertaking to discharge the liability on the arising of the eventuality mentioned in the Bank guarantee. Such Bank guarantees have assumed great significance in the present commercial system and in contracts between the various parties. An elaborate system has been built on the footing that the Banks would always honour without any objection the obligation under the guarantee. The complainant is a beneficiary under the Bank guarantee obtained by the third opposite party for consideration and is thus a consumer within the meaning of the Act. The next submission of the learned Counsel for the appellant is that the State Commission erred in not appreciating that the amount under the Bank guarantee was required to be remitted in foreign currency and as such it was incumbent upon the complainant to obtain the permission of the Reserve Bank of India in accordance with the laws in force and that the delay caused by reason of following such procedure could not afford a ground to the complainant to claim any compensation. It is on the record that the concerned branch of the Union Bank of India at Saharanpur which issued the performance guarantee, did not have necessary sanctions to do so and to deal in foreign exchange. It is for this reason that it had to seek permission from the Reserve Bank of India for paying the amount falling due in foreign exchange to M/s. Seppo Rally OY upon invocation of the Bank guarantee. This process took roughly 13 -14 months which period the price of the Pound Sterling, the currency in which payment was to be made, fluctuated. We, therefore, uphold the finding of the State Commission that there is deficiency in service in not settling the claim of the complainant within one month of the invocation of the Bank guarantee. The State Commission, however, could not grant relief to the complainant in Pound Sterling. Having regard to the provisions of the Foreign Exchange Regulation Act, 1973 particularly the principal transactions regulated by it, such as, purchase, borrowal or acquisition of foreign exchange [Section 8(1)]; sale, transfer, exchange or giving loan of foreign exchange [Section 8(1)] sale and purchase of foreign exchange at the rates authorised by R.B.I. [Section 8(2)] and utilisation

of foreign exchange for permitted purposes [Sections 8(3) & (4)], restrictions on payments (Section 9) and restrictions on settlement provided in Section 24, it is manifest that the compensation which can be ordered by Consumer FORA can only be in the currency of the country. The complainant cannot be permitted to acquire foreign exchange by indirect method of an award in his favour. He will have to approach the Reserve Bank of India for remission in foreign exchange. The power to grant relief, in our view is only in terms of the Indian Currency. The exchange rate on 20.1.90 was Rs. 28.20 whereas the exchange rate that existed on 4.3.91 was Rs. 36.26. The complainant was entitled to receive the amount of Bank guarantee of Rs. 10,53,735/ - on 20.1.90 converted into Pound Sterling. He was entitled to £37,366 whereas he was paid £29,062 on 4.3.91. Thus the complainant was less paid by £8,304 equivalent to Rs. 3,01,103/ - on 4.3.91. The complainant is entitled to receive this amount of Rs. 3,01,103/ - with interest @ 15% per annum from 5.3.91 till the date of payment and the Bank is directed to pay this amount within two months. There will be no order as to costs of this appeal. Ordered accordingly. __

