(2016) 09 NCDRC CK 0157

In the National Consumer Disputes Redressal Commission

Case No : 1625 of 2011

UNION OF INDIA, & ANR. — APPELLANT

Vs

DR. MAHIPAL AGGARWAL, & ORS. — RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Citation : 2017 2 CPR 717

Hon'ble Judges : B.C. Gupta

Advocate : Anuj Aggarwal, Praduman Kumar Aggarwal

Final Decision : Petition dismissed

Judgement

1. This revision petition has been filed against the impugned order dated 8.12.2010, passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (hereinafter referred as the ''State Commission'') in First Appeal No.2371/2005 , Dr. Mahipal Aggarwal vs. Union of India and another, vide which, while accepting the appeal, the order passed by the District Consumer Disputes Redressal Forum, Sonepat in consumer complaint no.5041 of 2005, filed by the present respondent Dr. Mahipal Aggarwal, dismissing the said complaint, was set aside.

2. The factual matrix of the case says that the complainant/respondent Dr. Mahipal Aggarwal had opened an account no.272 in the Head Post Office, Sonepat on 7.2.1989 in NSS Scheme in which he deposited various amounts on different dates. In September, 2004, the complainant intended to withdraw money from his account and for that purpose, he contacted the concerned Post Master who advised him that if he transferred the money in the said account no.272 to another scheme, that is, Senior Citizens Scheme, the income tax shall not be deducted at source (TDS), otherwise the maturity amount in the NSS account shall be paid to him through cheque, after deduction of TDS. As per the complainant, the Post Master also advised him to contact one agent Manohar Kumar for help in getting his money converted into the Senior Citizens Scheme. The complainant met the said agent on 20.9.2004 and handed over the pass

book of account no. 272. At that time, there was a balance of Rs.3,06,114/- in that account. The complainant further handed over a crossed cheque in favour of the Post Master for Rs. 2 lakhs, vide cheque no. 40593 dated 23.9.2004, drawn on Canara Bank, Sonepat, so that a total sum of Rs.5,06,114/- could be invested in the Senior Citizens Scheme. The complainant has stated in his consumer complaint that after handing over the pass book of NSS account and a further a cheque of Rs.2 lakhs to the agent, the complainant contacted the Post Master a number of times, but he was told that Senior Citizens bonds were not available in the Post Office and would be handed over to him in due course. However, on 8.11.2004, the complainant learnt that the said agent had fled away after cheating various people. He also came to know that the agent had drawn the amount of Rs.3,06,114/- from the NSS account after forging signatures of the complainant on the withdrawal form and also got encashed the cheque of Rs.2 lakhs. Alleging fraud on the part of the agent, in connivance with the authorities of the Postal Department, the complainant filed the consumer complaint in question, seeking directions to the opposite party (OP), Department of Posts, Government of India to make payment of Rs.5,06,114/- to him alongwith interest 18% per annum from the date of deposit till realization and in addition, a sum of Rs.2 lakhs as compensation against mental agony and Rs.5,500/- as cost of litigation.

3. The complaint was contested by the OPs by filing a written statement in which they stated that the NSS account no.272 was closed on 22.9.2004, with closing amount of Rs.3,06,114/- through a messenger Manohar Lal alias Manohar Kumar. It is also stated that the cheque of Rs.2 lakhs was cleared on 27.9.2004 and SB A/c no.452608 was opened on 29.9.2004 for Rs.2 lakhs. Thereafter, a sum of Rs.1,99,000/- was withdrawn on 5.10.2004. It is also stated that Shri Kumar was officially authorized for transactions upto 30.3.2004 with CA no.105751, but thereafter, he was not the authorized agent to accept money for investing in schemes of the post office. The OP took the stand that since in September, 2004, Shri Kumar was no longer the agent, the Department had nothing to do with the alleged fraud. The OP also stated that the complainant himself left his pass book of NSS account with Shri Kumar and he did not bother to collect the papers back from him and to enquire about his pass book.

4. The District Forum after taking into account the averments by the parties, dismissed the consumer complaint and held that intricate questions of law and facts were involved in the matter, which could be proved by the parties by leading elaborate evidence before a competent court of jurisdiction. Being aggrieved against the said order, the complainant challenged the same by way of appeal before the State Commission. The State Commission allowed the said appeal, holding the OPs deficient for realizing the amount of Rs.3,06,114/- from NSS account no.272 as well as encashment of cheque of Rs.2 lakhs to the agent and directed that the amount of Rs.5,06,114/- should be paid by the OPs to the complainant alongwith interest @ 9% per annum from the date of fraud till realization alongwith Rs.5,000/- as cost of litigation. Being aggrieved against the

impugned order of the State Commission, the OPs are before this Commission by way of the present revision petition.

5. It was contended by the learned counsel for the petitioners that Manohar Kumar was not the agent of the OPs in the month of September, 2004; hence they were not responsible for dealings between the complainant and the said person. It was the complainant who had appointed Shri Kumar as his messenger and hence, no liability could be fastened on the OPs. The learned counsel stated that the order passed by the District Forum reflected a correct appreciation of the facts and circumstances on record and should have been upheld by the State Commission.

6. Per contra, the learned counsel for the complainant has drawn attention to the order passed by the State Commission, stating that the OPs were responsible for wrong disbursal of the amount of Rs.3,06,114/- from the NSS account and also for encashment of cheque for Rs.2 lakhs and hence, the State Commission had rightly allowed the consumer complaint in question. The connivance between the agent and the officials of the postal department was quite clear, because even the signatures on the withdrawal form did not tally with the signatures of the complainant. The order passed by the State Commission was therefore in accordance with law and should be upheld.

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

8. It has been admitted by the petitioners/OPs in their reply filed before the District Forum that the complainant had NSS account no.272 with them, in which the outstanding amount was Rs.3,06,114/- as in September, 2004. During hearing before this Commission as well, it has been admitted by the petitioner that in case of closure of this account, the money is to be remitted by the OPs to the complainant by means of cheque only, since the amount involved was more than Rs.20,000/-. Moreover, it is mandatory on the part of the OPs to deduct the TDS on the said amount. From the chain of events in this case, it is not clear how the said amount of Rs.3,06,114/- was allowed to be withdrawn without the deduction of income tax. The OPs have not clarified how the said amount was given to the alleged messenger of the complainant by cash, whereas they should have issued cheque for the amount, after deducting TDS. It is evident, therefore that the action of the OPs in releasing the amount in cash amounts to deficiency in service and also indicates fraudulent conduct on their part. Further, the cheque of Rs.2 lakhs given by the complainant drawn on Canara Bank was made in the name of the Post Master. It has been explained by the OPs in their written statement that a new SB A/c was opened with the amount of Rs.2 lakhs. Thereafter, a sum of Rs.1.99 lakhs was withdrawn from that account on 5.10.2004. It is clear therefore that so far as the complainant is concerned, grave injustice and deficiency in service towards him has been committed due to the negligence by the authorities of the OPs. The State Commission have, therefore, rightly concluded that the petitioners/OPs are liable to make payment

of the concerned amount to the complainant alongwith interest. Although OPs have taken the plea that the said agent was with them till 31.3.2004 only and not thereafter, this argument does not cut any ice, because the complainant would have no means to know whether the authority given to the agent had been renewed by the Department or not.

9. Based on the discussion above, it is held that there is no illegality, irregularity or jurisdictional error in the order passed by the State Commission and the same is upheld. This revision petition is ordered to be dismissed, being without any merit. There shall be no order as to costs.