(2004) 01 NCDRC CK 0120

In the National Consumer Disputes Redressal Commission

Union of India APPELLANT

Vs

FERTICHEM (INDIA) LIMITED RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Citation : 2004 3 CLT 24 : 2004 3 CPR 274 : 2005 1 CPJ 139

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal filed by the O.Ps. against order dated 11.9.2003 passed by District Consumer Disputes Redressal Forum-I, U.T., Chandigarh [for short hereinafter referred to as the District Forum] in Complaint Case No. 243 of 2003 M/s. Feritchem (India) Ltd. and Another v. Union of India and Another.

2. MS. Deepali Puri, Advocate appearing for the appellants submitted that the National Saving Certificates (for short hereinafter referred to as the NSCs) purchased by the respondents/complainants - M/s. Fertichem (India) Limited through its partner Sh. Sushil Kumar Singhal and Shri Sushil Kumar Singhal himself, were contrary to the rules framed by the Ministry of Communication. Department of Posts, Union of India and, as such, the NSCs could not be entertained and encashed on maturity to the respondents/complainants. She pointed out that the NSCs, which in the instant case were in the name of the respondents/complainants firm-M/s. Fertichem (India) Limited were wrongly issued by the concerned Post Office i.e., Post Master, General Post Office, Sector 17, Chandigarh. She referred to the relevant rules, which became effective from 1.4.1995 providing that the NSCs could not be issued in the name of the firm and since the NSCs in this case were issued in the name of the firm, the Post Office was justified in refunding only the principal amount of the NSCs with simple interest admissible under the provisions of the Post Office Savings Account Rules, 1981. The District Forum held that the NSCs worth Rs. 40,500/- were issued to the respondent on 24.4.196 with maturity date of 22.4.2002 and were of 8th issue. The District Forum held that the appellant-Post Master, General

Post Office, Sector 17, Chandigarh was expected to know the relevant rules, which became effective from 1.4.1995 and should not have issued the NSCs but they ignored the rules and issued the NSCs, which act amounted to deficiency in service. The District Forum held the respondents/complaints entitled to the maturity amount of the NSCs. The complaint was allowed and the appellants were directed to pay to the complainants the maturity amount of the NSCs to the tune of Rs. 81,607/-. Interest also awarded @ 7% per annum w.e.f. 24.4.2002 till is payment.

Mr. Pankaj Chandgothia, Advocate appearing for the respondents/complainants contended that the District Forum has rightly held deficiency in service on the part of the appellants and allowed the complaint and issuing the direction of the payment of an amount of Rs. 81,607/- with interest.

3. THE sole point, which arises for determination is whether the appellants were justified in refunding only the principal amount of the NSCs 8th issue of a sum of Rs. 40,500/- with simple interest allowed at the rate, which is applicable to the Savings Bank account. It is evident from the perusal of the photocopies of the NSCs, which are on record that the appellants issued the NSCs on 24.4.1996 i.e., after 1.4.1995 when the rules prohibiting issuance of NSCs in favour of the complainants-firm had been promulgated. THE appellants/O.Ps. were required to know the rules while issuing the NSCs and in case the NSC was issued contrary to the rules in the name of the firm, this should have been detected at the earliest and notice should have been issued to the complainants apprising them of the said rule prohibiting the issuance of NSCs in the name of the firm and follow up action should have been taken at that time. However, the O.Ps. did not take any action in the matter and it was only when the NSCs were presented after maturity for getting amount of maturity, then the principal sum was ordered to be refunded to the complainants. Mr. Pankaj Chandgothial, Advocate relied on a judgment of the Hon''ble National Consumer Disputes Redressal Commission, New Delhi [for short hereinafter referred to as the National Commission] reported in the case of Sultanpur Kshetriya Gramine Bank Indu Video Films (P) Ltd. v. Chief Post Master and Another, I (1994) CPJ 201 (NC)=1994 (1) Consumer Law Today 709. In the case before the Hon''ble National Commission, the complainant Bank deposited Rs. 9 lacs with the Chief Post Master, Sultanpur as against the purchase of NSCs 6th issue for the said amount. The certificates matured for payment on 1.5.1992 inclusive of interest and an amount of Rs. 18,13,500/- became due and payable by the O.P. to the complainant. When the complainant made the demand for the payment of the mature value to the Chief Post Master, the Bank was told that the certificates should not have been issued to it at all because under the relevant rules, the complainant Bank was not entitled to invest in the NSCs 6th Issue Scheme and only individuals could avail the benefit under the scheme. The complainant was offered the payment of the principal with interest @ 5% per annum. The Hon''ble National Commission directed the O.P. to pay to the complainant balance amount payable by way of interest on the aforesaid basis.

4. THE other judgment relied on is reported in case of Senior Superintendent of Post Offices and Others v. Anukiriti Leasing and Exports Pvt. Ltd., III (2003) CPJ 617. In that case, the finding of the District Forum was about the deficiency in service on the part of the Senior Superintendent of Post Offices and the said finding was affirmed in appeal. THE maturity amount of NSCs was ordered to be paid with interest. On the other hand, Ms. Deepali Puri, Advocate relied on the case of Punjab and Sind Bank v. Smt. Sukhraj Bajwa and Another, III (2004) CPJ 1 (NC)=2003 CTJ 897 (CP) (NCDRC). It was held by the Hon''ble National Commission that as per the Reserve Bank of India guidelines, interest only @ 5% per annum was payable to the NRI Account. The Bank, however, calculated interest @ 13% per annum which was alleged to be on account of inadvertence. The Hon''ble National Commission held that the rate of interest deserved to be reduced to fall in line with the guidelines issued by the Reserve Bank of India. However, considering the Bank''s inadvertence to be a deficiency in its service, which caused loss and agony to the complainant, the Bank directed to compensate her on equitable ground by paying her Rs. 50,000/- with 10% interest. The other authority relied on by the learned Counsel for the appellants is reported in the case of Union of India and Others v. Monika Tandon and Others, II (1995) CPJ 20 (NC). In that case, NSCs had been issued irregularly and in contravention of rules, in the name of three persons. It was held by the Hon''ble National Commission that the ends of justice demanded that interest be paid to the holders. It may be pointed out that there was difference of opinion between the Hon''ble President, on the one hand and the two members, on the other hand. The Hon''ble President held that "I would like to record that I have serious doubts and reservations about the correctness of the above reasoning and conclusion. I shall set out my view on the matter on another appropriate occasion".

5. AT the time of issuing of NSCs in the name of the complainant-Firm, the relevant rules had already become effective from 1.4.1995. The NSCs in question were issued subsequent to the said date of 1.4.1995. It is presumed that the rules of the department are known to the functionaries of the Post Office who are charged with the duty of issuing the NSCs and in case they in utter disregard to the rules, issue a NSC, they committed deficiency in service to the complainant who cannot be made to suffer on that account. We have noticed above that the department did not correct its mistake after issuing the NSCs and it was only when the NSCs matured for payment, then the reference was made to the relevant rules and only the principal sum invested in the NSCs with simple interest, which is admissible for Savings Bank Account, was paid to the respondent/complainant. Since the relevant rules do not permit the issuance of NSCs in the name of a firm, we cannot record a finding that the NSCs have been issued regularly and they should be acted upon by the department.

6. SINCE the appellant- Post Office through its authorised employees who issued the NSCs were deficient in rendering due service to the respondents/ complainants, the appellants are to be fastened with the liability to pay the

amount of compensation. The complainants due to the deficiency in service on the part of the concerned Post Office was put to actual loss/damage of a sum of Rs. 41,107/-, which he is entitled to get as compensation. In our considered opinion, the respondents/complainants would be entitled to get the principal amount of Rs. 40,500/- invested in the NSCs and the balance of the matured amount i.e., Rs. 41,107/- will be paid to the complainants as compensation for deficiency in service. Subject to this modification, the appeal is dismissed. The appellants are directed to make the payment of the said amount with interest @ 5% per annum from that date of NSCs became matured for payment less the amount of interest already paid to the respondents/complainants. These directions be complied with within a period of one month from the date of receipt of certified copy of this order. The costs shall, however, be borne by the parties themselves. Copies of this order be sent to the parties free of charge. Appeal dismissed.