

Union Bank of India

Vs

Seppo Rally Oy and Another

Civil Appeal No. 114440 of 1996

(S. Saghir Ahmad, D. P. Wadhwa JJ)

23.09.1999

JUDGMENT

D. P. WADHWA J.-

1. Appeal Union Bank of India is aggrieved by the order dated 18-6-1996 of the National Consumer Disputes Redressal Commission ("National Commission" for short) passed on appeal from the order dated 21-7-1993 of the State Commission of Delhi.

2. The State Commission had allowed the complaint of the first respondent M/s Seppo Rally OY, a foreign company based in Finland against at the rate of 15% to the first respondent from 27-5-1992, the date when the complaint was filed. The Bank was also burdened with cost of Rs. 2500. The National Commission and the State Commission have been constituted under Section 9 of the Consumer Protection Act, 1986 (for short "the Act"). The State Commission is established by the State Government in the State and the National Commission is established by the Central Government. Appeal filed by the Bank before the National Commission under Section 19 of the Act against the order of the State Commission was dismissed. Now it was directed that the complainant, the first respondent, is entitled to an amount of Rs 3,01,103 with interest at the rate of 15% per annum from 5-3-1991 till the date of payment. The National Commission said that the complainant was entitled of £ 37,336 whereas it was paid only £29,062 on 4-3-1991. An amount of £ 8304 was paid less which is equivalent in Indian currency of Rs 3,01,102 as on 4-3-1991.

3. Two contentions have been raised by Mr. Dushyant Dave, Senior Counsel appearing for the Bank: (1) there was no deficiency in service as defined in clause (g) of Section 2 of the Act, and (2) the Delhi State commission had no jurisdiction to entertain the complaint as no cause of action arose within Delhi, the Central officer of the Bank was at Bombay and the Branch Office which issued the bank guarantee, the subject-matter of the complaint, was at Saharanpur in the State of U.P.

4. M/s Dany Dairy and Food Engineers Ltd., who is impleaded as the second respondent, on 14-12-1988 entered into an agreement with the complainant for supply of two evaporator systems valued at Rs 25,98,473. Under the agreement the complaint was to make 100% advance payment to the second respondent on the condition of the second respondent furnishing the bank guarantee. In the complaint the address of the second respondent was given as that of Okhla Industrial Area, Phase I, New Delhi. However, the second respondent was having its business operations at Saharanpur, U.P. On the request of the second respondent Union Bank of India, Saharanpur Branch on 19-12-1988 gave a bank guarantee for a sum of Rs.25,98,475. This bank guarantee was reduced on 14-8-1989 to Rs. 10,53,73. The bank guarantee was in favour or the complainant and was sent directly by the Bank to Skopbank Helsinki, Finland. We are not concerned with the conditions of the bank

guarantee except to note that it was invoked by the complainant on 19-12-1989.

5. The bank guarantee was extended up to 31-12-1989. Claim was made in a sum of Rs 10,53,735. Skopbank also sent a telex message to the Central Office of the Bank at Bombay for immediate payment of the amount under the bank guarantee. Skopbank was informed by a telex message dated 12-1-1990 by the Central Office of the Bank that the matter was receiving attention and sought clarification as to why the claim had been specified to Rs 10,53,735 instead of the rupee value of ₹ 26,792. Skopbank was also asked to look into its liability to pay the proceeds of certain bill dated 7-10-1988 which had fallen due for payment on 14-3-1989, the payment of which was guaranteed under its Guarantee letter No. 91037688 for ₹ 55,000. Notice to the Bank were sent by the advocate for the first respondent claiming the amount under the bank guarantee. Since no reply had been received from Skopbank regarding ₹ 55,000, it appears, the matter rested to that. That Bank was however, told by a telex message dated 12-4-1990 from Skopbank that it had paid on 11-4-1990 ₹ 55,000 under its Guarantee No. 2072002002 and that payment had been transferred according to Dany Dairy and Food Engineers Ltd.'s order to Grindlays Bank ANZ in New Delhi. Skopbank was informed by telex message date 19-4-1990 from the Central Office of the Bank that the payment of GBP 55,000 had not so far been received by Grindlays Bank ANZ. Skopbank was requested to give instructions to Grindlays Bank ANZ for payment of the claim amount of ₹ 55,000 to the Saharanpur Branch of the Bank in the account of Dany Dairy and Food Engineers Ltd. On 24-4-1990 the Area Manager of the first respondent wrote to the Bank about the discussions he had with the officers of the Bank on 19-4-1990 when the Bank and decided to release payment of bank guarantee of RS 10,53,735 and that the matter had been taken up with RBI (Reserve Bank of India) to release the money in foreign exchange. Thereafter, correspondence went on with RBI seeking permission to release the money and RBI seeking certain clarifications. Immediately after RBI had given its permission the amount was paid in the foreign currency which was equivalent to Rs 10,53,753.

6. The question that arises for consideration is: if there has been any deficiency in service provided by the Bank to the first respondent. Service under clause (o) of Section 2 of the Act means.

"service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service".

Deficiency under Clause (g) of Section 2 of the Act means

"any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract to otherwise in relation to any service".

It is not disputed that by making available the bank guarantee the Bank provided service within the meaning of clause (o) of Section 2 of the Act but not making payment under the bank guarantee immediately after it was invoked was there any deficiency in service, is the question which requires consideration.

7. To examine if there is any deficiency in service we have to see whether has been any fault,

imperfection, shortcoming or inadequacy in the performance of the service by the Bank. Bank guarantee is a separate contract between the Bank and Seppo Rally of Finland. It is not disputed that it is an unconditional bank guarantee and when it was invoked the amount guaranteed therein had to be paid to the account of the first respondent. The Bank has taken the plea that it did not fail in any way and that if there was delay, firstly it was on account of Skopbank not replying to its query validly raised and secondly RBI took time to grant permission to remit the amount under the bank guarantee in foreign exchange under the Foreign Exchange Regulation Act, 1973 (FERA). Reference has been made to Section 8,9 and 24 of FERA to support the submissions that the Bank could not have of its own remitted the amount under bank guarantee in foreign exchange. The National Commission itself modified the order of the State Commission, which had ordered the remittance of the amount of the bank guarantee in foreign exchange stating that the State Commission could order only payment in Indian Currency and thus arrived at the Figure of Rs. 3,01,103. It may be noticed that by virtue of Section 18 of the Act which prescribes the procedure applicable to the State Commission, Section 14 of the Act has been made applicable. Under Section 14 when the District Forum is satisfied that any of the allegations contained in the complaint about the services are proved it shall issued an order to the opposite party directing him to do one or more following things, namely

"14. (1) (a)-(c) \* \* \*

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;"

8. In *Consumer Unity & Trust Society v. Chairman & Managing Director, Bank of Baroda* ((1995) 2 SCC 150) the employees of the respondent Bank resorted to illegal strike which continued for 54 days. In the complaint filed before the National Commission, it was urged that the Bank was liable to pay various amounts to the customers like interest on overdraft accounts to be reimbursed at lending rate during the period the account was not operative; interest at the lending rate on the negotiable instruments held in suspense during this period to be reimbursed to the customers etc. This Court referred to the definitions of "service" and "deficiency" appearing in clauses (o) and (g) of Section 2 of the Act and said that the expression "any deficiency" widens the ambit of service and extends it to nay service and even though the depositors were deprived of the service of the Bank but the deficiency did not arise due to one of the reasons mentioned in clause (g) This is how this Court considered the question: (SCC pp. 152-53, para 2)

"The shortcoming in the service by the Bank did not arise due to failure on the part of the Bank in performing its duty or discharging its obligations as required by law, Since the depositors were prevented to avail of the services of the Bank not because of any deficiency on the part of the Bank but due to strike resorted to by the employees who almost physically prevented the Bank from functioning, the failure of the bank to render service could not be held to give rise to claim for recovery of nay amount under the Act. Further, the power and jurisdiction of the Commission is to award compensation under Section 14(1)(d) of the Act as it has been made applicable to he Commission by sub-rule (b) of Rule 19 of the rules framed under the Act. Clause (d) of sub-section (1) of Section 14 is extracted below:

‘..... To pay such amount as may be awarded by it as compensation tot he consumer for nay loss or injury suffered by the consumer due to the negligence of the

opposite party."

Each of these expressions used in the sub-section are of wide connotation and are fully comprehended both in common and legal sense. Negligence is absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances. But the negligency for which a consumer can claim to be compensated under this subsection must cause some loss or injury to him. Loss is a generic term. It signifies some detriment or deprivation or damage. Injury too means any damages or wrong. It means 'invasion of any legally protected interest of another'. Thus the provisions of Section 14(1)(d) are attracted if the person from whom damages are claimed is found to have acted negligently and such negligence must result in some loss to the person claiming damages. In other words, loss or injury, if any must flow from negligently and such negligence must result in some loss to the person claiming damages. In other words, loss or injury, if any, must flow from negligence must result in some loss to the person claiming damages. In other words loss or injury, if nay must flow from negligence. More loss or injury without negligence is not contemplated by his section. The Bank has not been found to be negligent in discharge of its duties. Therefore, even if any loss or damage was caused to nay depositor but it was not caused due to negligency of Bank then no claim of damages under the Act was maintainable."

9. Considering the stand taken by the Bank and the statement of law as spelled out in the aforesaid judgment it would be thus seen that there has not been any deficiency in service provided by the Bank and in our view the national Commission and the State Commission were wrong in coming to the contrary conclusion. We would, however, like to point out that when it is a question of remittance of foreign exchange and permission of RBI is required and there is a query raised by RBI, it will be more appropriate to discuss the matter with the official concerned of RBI than to have a prolonged correspondence.

10. The next question is regarding jurisdiction of the State Commission constituted for the national Capital Territory of Delhi. Under Clause (p) of Section 2 of the Act the State Commission means a Consumer Disputes Redressal Commission established in a State under clause (b) of Section 9 of the Act. Under this Clause (b) of Section 9 a Consumer Disputes Redressal Commission to be known as the State Commission shall be established by the State Government in the State commission and Section 17 for its jurisdiction. Under Section 18, as noted above, the procedure applicable to the State Commission is the same as contained in Section 12, 13 and 14 and the rules made there under for the disposal of the complaints by the District Forum which shall, with such modification as may be necessary, be applicable to the disposal of disputes by the State Commission.

11. Section 11 deals with jurisdiction of the District Forum. Sub-Section (1) provides that a District Forum will have jurisdiction to entertain complaints where the value of the goods or services etc. does not exceed rupees five lakhs. Sub-section (2) provides in which District Forum a complaint could be instituted. This sub-section is as under:

"11. (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction.-

- a. the opposite party each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on

- business or has a branch office personally works for gain; or
- b. any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
  - c. the cause of action, wholly or in part, arises."

12. Under Section 17 of the Act a State Commission has jurisdiction to decide the complaints of the value between rupees five and twenty lakhs but there is no such provisions as contained in sub-section (2) of Section 11 of the Act applicable to the State Commission. Section 18 of the Act does not make provision of sub-section (2) of Section 11 applicable to the State Commission. Each State has its own States Commission. There is a purpose for it. The first appeal of the District Forum situated within the state lies to the State Commission and then the State Commission can take cognizance of the dispute arising within that State. It cannot be the intention of the legislature that the dispute arising in one State. We have to have purposive interpretation of the provisions and we have to hold that similar provisions as contained in sub-section (2) of Section 11 with modifications as may be necessary, shall be applicable to the State Commission. In fact these are the basis provisions conferring territorial jurisdiction on a tribunal otherwise it will lead to absurd situations. We must read into Section 17 the same provisions as contained in sub-clause (ii) of clause (a) of Section 17 appeals against order are heard by the State Commission against the order of any District Forum within that State. In the present case M/s Dany Dairy and Food Engineers Ltd. approached the Saharanpur Branch of the Bank. Saharanpur Branch is situated within the State of U.P. No part of the cause of action has arisen in Delhi. It is difficult to agree with the view of the State Commission and also of the national Commission that the State Commission at Delhi had jurisdiction in the matter.

13. We, therefore, uphold both contentions of the contentions of the appellant and set aside the order of the National Commission as well as of the State Commission. The complaint filed by the first respondent is dismissed. There shall be no order as to costs.