(Equivalent Citation:- VII (1999) SLT 633, 1999 (2) CLT 689 (SC), 2000 AIR(SC) 62, 1999(6) SCALE 172, 1999(8) Supreme 200, 1999(8) SCC 357, 2000(99) CompCas 490, 1999(7) JT 437)



III (1999) CPJ 10 (SC)

SUPREME COURT OF INDIA

S. Saghir Ahmad & D.P. Wadhwa, JJ.

UNION BANK OF INDIA—Appellant

versus

M/S. SEPPO RALLY OY & ORS.—Respondents

Civil Appeal No. 11440 of 1996—Decided on 23.9.1999

(i) Consumer Protection Act, 1986 — Sections 2(1)(o), 2(1)(g), 14 — Deficiency in Service; Remittance of Foreign Exchange by Bank : No Delay : No Deficiency — Bank Guarantee is separate contract between Bank and respondent — When invoked, amount guaranteed to be paid to account of 1st respondent — Plea taken by Bank that delay if any was on account of respondent not replying to its query validly raised and RBI took time to grant permission to remit amount under Bank Guarantee in foreign exchange under FERA — In view of stand of Bank and statement of law taken in *Consumer Unity & Trust Society,* no deficiency in service provided by Bank not proved — N.C. and S.C. wrongly concluded so — In case of remittance of foreign exchange when permission of RBI is required and query is raised by RBI it will be appropriate to discuss matter with concerned official of RBI.

Held : To examine if there is any deficiency in service we have to see whether there 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. 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 the Skopbank not replying to its query validly raised and secondly the 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 Sections 8,9 and 24 of FERA to support the submission that the Bank could not have of its own remitted the amount under Bank Guarantee in

foreign exchange. 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/-.

(Para 7)

Held further : Considering the stand taken by the Bank and the statement of law as spelt 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 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 the RBI, it will be more appropriate to discuss the matter with the concerned official of the RBI than to have a prolonged correspondence.

(Para 9)

(ii) Consumer Protection Act, 1986 — Sections 2(1)(p), 9(b), 11(2), 17 and 18 — Jurisdiction of State Commission : Dispute Arising in One State cannot be Taken Cognizance by State Commission of Other State — Each State has its own State Commission — Purpose — It cannot be the intention of Legislature that dispute arising in one State could be taken cognizance by State Commission of other State — Bank Guarantee invoked at Saharanpur — Payment also made at Saharanpur Branch of Bank situated within State of Uttar Pradesh — No part of cause of action arose in Delhi — State Commission and National Commission erroneously held that State Commission at Delhi had jurisdiction in the matter.

Held : Under Section 17 of the Act a State Commission has jurisdiction to decide complaints of the value between rupees five and twenty lakhs but there is no such provision as contained in Sub-section (2) of Section 11 of the Act applicable to 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 State Commission. There is purpose for it. First appeal of the District Forum situated within the State lies to the State Commission and then State Commission can taken cognizance of the dispute arising within that State. It cannot be the

intention of the Legislature that dispute arising in one State could be taken cognizance by State Commission of other 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 basic provisions conferring territorial jurisdiction on a Tribunal otherwise it will lead to absurd situations.

(Para 12)

Held further : In the present case M/s. Dany Dairy and Food Engineers Ltd. approached the Saharanpur Branch of the Bank to provide Bank Guarantee which it did. The Bank guarantee was invoked at Saharanpur and payment was also made by 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.

(Para 12)

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

(Para 13)

Result : Appeal allowed.

Case referred :

I (1995) CPJ 1 (SC)=1995 (2) SCC 150. *(Relied)* *[Para 8]*

Counsel for the Parties :

For the Appellant : *Mr. Dushyant A. Dave, Sr. Adv. with Mr. U.A. Rana, Ms. Arshi Schail for M/s. Gagrat & Co., Advocates.*

For the Respondents : *Mr. J.P. Dhanda & Mr. P.N. Gupta (NP) Advocates.*

JUDGMENT

D.P. Wadhwa, J.—Appellant Union Bank of India is aggrieved by the order dated June 18, 1996 of the National Consumer Disputes Redressal Commission ('National Commission' for short) passed on appeal from the order dated July 21,1993 of the State Commission of Delhi.

2. State Commission had allowed the complaint of the first respondent M/s. Seppo Rally OY, a foreign company based in Finland against the Union Bank of India, the appellant, directing the Bank to pay 11,234 with interest at the rate of 15% to the first respondent from May 27, 992 the date when the complaint was filed. Bank was also burdened with cost of Rs. 2,500/-. The National Commission and the State Commission have been constituted under Section 9 of the Consumer Protection Act, 1986 (for short the 'Act') 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 March 5,1991 till the date of payment. National Commission said that the complainant was entitled to 37,336 whereas it was paid only 29,062 on March 4, 1991. An amount of 8,304 was paid less which is equivalent in Indian currency of Rs. 3,01,102/- as on March 4, 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 Sub-Section (1) of Section 2 of the Act, and (2) Delhi State Commission had no jurisdiction to entertain the complaint as no cause of action arose within Delhi, Central Office of the Bank was at Bombay and the branch office which issued the Bank Guarantee, 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 second respondent, on December 14, 1988 entered into an agreement with the complainant for supply of two evaporator systems valued at Rs. 25,98,473/-. Under the agreement the complainant was to make 100% advance payment to the second respondent on the condition of second respondent furnishing the Bank Guarantee. In the complaint address of the second respondent was given that of Okhla Industrial Area, Phase-I, New Delhi. However, 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 December 19,1988 gave a Bank Guarantee for a sum of Rs. 25,98,475/ -. This Bank Guarantee was reduced on August 14,1989 to Rs. 10,53,735/-. The Bank Guarantee was in favour of 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 December 19, 1989.

5. The Bank Guarantee was extended upto December 31,1989. 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 telex message dated January 12, 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 rupee value of 26,792. Skopbank was also asked to look into its liability to pay proceeds of certain bill dated October 7, 1989 which had fallen due for payment on March 14,1989 payment of which was guaranteed under its guarantee letter No. 91037668 for 55,000. Notices to the Bank were sent by Advocate for the first respondent claiming the amount under the Bank Guarantee. Since no reply had been received from the Skop bank regarding 55,000, it appears, the matter rested at that. Bank was, however, told by a telex message dated April 12, 1990 from Skopbank that it had paid on April 11, 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 dated April 19, 1990 from the Central Office of the Bank that the payment of GBP 55,000 had not so far been received by the Grindlays Bank ANZ. Skopbank was requested to give instructions to Grindlays Bank ANZ for payment of the claim amount of 55,000 to the Sharanpur Branch of the Bank in the account of Dany Dairy and Food Engineers Ltd. On April 24, 1990, Area Manager of the first respondent wrote to the Bank about the discussions he had with the officers of the Bank on April 19,1990 when the Bank had decided to release payment of Bank Guarantee of Rs. 10,53,735/- and that the matter had been taken up with the RBI (Reserve Bank of India) to release the money in foreign exchange. Thereafter, correspondence went on with the RBI seeking permission to release the money and RBI seeking certain clarifications. Immediately after the RBI had given its permission the amount was paid in the foreign currency which was equivalent to Rs. 10,53,735/-.

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 Sub-Section of (1) 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 loading 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 Sub-Section (1) of Section 2 of the Act means “any fault, imperfection, shortcoming or inadequacy in the quality, nature of 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 or otherwise in relation to any service”. It is not disputed by making available the Bank Guarantee Bank provided service within the meaning of Clause (o) of Sub-Section (1) 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 there 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. 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 the Skopbank not replying to its query validly raised and secondly the 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 Sections 8,9 and 24 of FERA to support the submission that the Bank could not have of its own remitted the amount under Bank Guarantee in foreign exchange. 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 procedure applicable to State Commission, Section 14 of the Act has been made applicable.

Under Section 14 when District Forum is satisfied that any of the allegations contained in the complaint about the services are proved it shall issue an order to the opposite party directing him to do one or more following things, namely—

> "(a) to (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, Jaipur*** v. ***Chairman & Managing Director, Bank of Baroda, Calcutta & Anr.,*** I (1995) CPJ 1 (SC)=1995 (2) SCC 150, the employees of the respondent Bank resorted to illegal strike which continued for 54 days. In complaint filed before the National Commission, it was urged that the Bank was liable to pay various amounts to the customers like interest on overdrafts 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(1) of the Act and said that the expression "any deficiency" widens the ambit of service and extends it to any 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 :

> "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 any 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 the 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 to the consumer for any 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 negligence for which a consumer can claim to be compensated under this sub-section 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 negligence. Mere loss or injury without negligence is not contemplated by this 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 any depositor but it was not caused due to negligence 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 spelt out in the aforesaid judgment it would be thus seer, that there has not been any deficiency in service provided by the Bank and in our view 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 the RBI, it will be more appropriate to discuss the matter with the concerned official of the RBI than to have a prolonged correspondence.

10. Next question is regarding jurisdiction of the State Commission constituted for the National Capital Territory of Delhi. Under Clause (p) of Section 2(1) of the Act 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 by notification. Section 16 provides for composition of the State Commission and Section 17 for its jurisdiction. Under Section 18, as noted above, procedure applicable to State Commission is same as contained in Sections 12,13 and 14 and the Rules made thereunder for the disposal of the complaints by the District Forum which shall, with such modification as may be necessary, be applicable to 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 Form 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 or 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 or personally works for gain; or
>
> (b) any of the opposite parries, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or have 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 complaints of the value between rupees five and twenty lakhs but there is no such provision as contained in Sub-section (2) of Section 11 of the Act applicable to 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 State Commission. There is purpose for it. First appeal of the District Forum situated within the State lies to the State Commission and then State Commission can taken cognizance of the dispute arising within that State. It cannot be the intention of the Legislature that dispute arising in one State could be taken cognizance by State Commission of other

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 basic 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-section (2) of Section 11 of the Act subject to such modifications as may be applicable to a State Commission. It may also be noticed that under Sub-clause (ii) of Clause (a) of Section 17 appeals against orders are heard by the State Commission against the orders 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 to provide Bank Guarantee which it did. The Bank guarantee was invoked at Saharanpur and payment was also made by 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 m 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 the contentions of the appellant and set aside the order of the National Commission as well as of State Commission. The complaint filed by the first respondent is dismissed. There shall be no order as to costs.

Appeal allowed.
