

A STUDY OF CONSUMER PROTECTION ACT RELATED TO BANKING SECTOR

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ABSTRACT

According to the constitution of India justice is an important part in which a consumer justice and protection is one subpart. There are number of legislations were passed by the Indian Parliament but they fail to protect the interest of small consumers. In the Consumer Protection Act, 1986 was passed, to protect the interest of the consumers. In this article, I try to deal with the negligence and deficiency in service of banks in relation to shares and investments and what are rights and remedies as a consumer. I try to discuss some cases related to the topic in my paper.

KEYWORDS : CPR : Consumer Protection Reporter
CPJ : Consumer Protection Journal
NC : National Commission
MRTP : Monopolistic Trade Practices, Restrictive Trade Practices
SBI : State Bank of India
RBI : Reserve Bank of India

Introduction

In the constitution of India, social and economic justice is an important part in which a consumer justice and protection is also a part. There are number of legislations were passed by the Indian Parliament such as Drugs (Control) Act, 1950; Prevention of Food Adulteration Act, 1954; Essential Commodities Act, 1955; Essential Services Maintenance Act, 1968; Trade and Merchandise Marks Act, 1958; MRTP Act, 1969, etc. But all these act are failed to protect the interest of small consumers. The procedures under these acts are typical and litigations, also time consuming and costly. At the same time there are so many facilities of these act but due to procedure and lengthy time, common man (consumer) will avoid it.

The United Nations General Assembly passed a resolution No. 39/248 on 8/4/1985 adopting guidelines relating to consumer protection. Which further provide a framework for the Governments of the developing countries, for formulation of consumer protection policies and legislation.

Finally in 1986, the Indian Parliament passed the Consumer Protection Act, 1986, as the name suggests, to protect the interest of the consumers and to provide them a mechanism for easy, quick and cheap redressal of grievances against the mighty and unscrupulous producers/traders and service providers.

Consumer Protection Act

According to this act following three-tier system has been provided under the Act to deal with consumer complaints ;

- a) District Forum- It operates at the district level and deals with consumer complaints pertaining to the value of goods or services and compensation not exceeding Rs. 20 lac.
- b) State Commission- It operates at the state level and deals with complaints of the value exceeding Rs. 20 lac but not exceeding Rs. 100 lac. It also hears appeals against the orders of the District Forum.
- c) National Commission- It functions at the national level for the complaints of the value exceeding Rs. 100 lac and hears appeals against the orders of the State Commission.

Complaints in relation to any goods or services may be preferred before the above mentioned forum by the consumer himself or by any recognized consumer association where the consumer is a member or where there are a number of consumers having the same interest, one or more consumers on behalf or for the benefit of all the consumers so interested. Complaints may also be preferred by the Central or the State Government.

As per section 2(1)(c), of the Act, following may form the subject- matter of complaint-

1. An unfair trade practice or a restrictive trade practice adopted by any trader
2. Defect in the goods purchased
3. Deficiency in service
4. Over-charging of price

In the context of the subject matter of the present article, it is important to note some important definitions provided in the Act.

1) Service : The term Service [Section 2(1)(o)] has been defined in the Act to mean service of any description and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy etc. but does not include the rendering of any service free of charge or under a contract of personal service.

2) Deficiency : The term deficiency [section 2(1)(g)], means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained under any law or in pursuance of a contract or otherwise.

3) Consumer : The term consumer section 2(1)(d) of the Act, A consumer is a person belonging to the following category – a) One who buys the goods for a consideration which has been paid or promised or partly paid and partly promised under any system of deferred payment.

b) One who hires or avails of any service or services including any beneficiary thereof or a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment

c) It includes a user or beneficiary of goods or services other than the person who actually buys goods or hires/avails services where such use is made with the approval of purchase or hire.

4) Consumer Dispute : The term consumer dispute has been defined under section 2(c) of the act to mean a dispute where the person against whom a complaint has been made denied or dispute the allegation contained in the complaint. The allegation referred may pertain to defect in goods,

deficiency in service, overcharging, sale of hazardous goods, adoption of unfair trade and practices or restrictive trade practices.

Study of consumer protection law and its applicability to banking sector

According to the act, "Consumer", section 2(1)(d) of the Act, includes a person who hires or avails of any service for a consideration. Therefore in banking transactions, a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, hires locker facility or obtains bank guarantee from a bank are all "consumers" and can prefer complaints under the Act for "deficiency in service" on the part of the bank or for "restrictive trade practice" or "unfair trade practice" adopted by the bank.

A person who has applied for shares is a consumer, contrary to the general misconception that an applicant for shares prior to their allotment cannot be a consumer. The reason for this misconception is the judgment of the Supreme Court in the case of Morgan Stanley where the Supreme Court interpreted the provisions of the Consumer Protection Act prior to its amendment in June 1993, and held that an applicant cannot enjoy the status of a consumer prior to allotment. Fortunately, the CP Act, was amended in 1993 so that prospective consumers, who have agreed to purchase any goods, would also have a right to file a complaint.

Applications for shares are mostly made by tendering the application to specified banks appointed by a company for that purpose. These banks are required to process the applications by presenting the applicant's cheque for clearance and then crediting the proceeds to the company's account. Subsequently, the company allots the shares or sends the refund order in accordance with the scheme of allotment.

Many times, during this processing, the bank misplaces or loses some application forms. In other cases, the bank appoints some computer agency for processing the data. Due to a mistake in feeding the details, some cheques are returned for re-presentation after correcting the relevant mistakes. Instead of making the necessary correction and re-presenting the cheque, the bank sleeps over the matter, and by the time the applicant comes to know of this fact, the issue has already closed.

In such cases, the applicant's money has not been received by the company floating the shares, and hence he would not be entitled to allotment of shares by the company. Here, action would lie against the bank and not against the company. Can the bank take a stand that the applicant has not paid any service charges to the bank for accepting and processing the application and hence the services rendered being free are outside the ambit of the Consumer Protection Act? No, the bank cannot wriggle out by raising such an excuse.

The bank is doing this work on a commercial basis and is being paid by the company to accept applications on its behalf. Hence, even though the applicant may not be paying service charges to the bank, the service is not free. The applicant thus becomes a beneficiary of the services hired by the company, and hence is entitled to file a complaint against the bank for its negligence and deficiency in service. A complaint against the bank can be filed.

To provide more attention to the definition of the word consumer, let us study the following cases in the court. These cases are in the favor of customer

- 1) In Punjab and Sind Bank vs. Manpreet Singh [1994 (3) CPJ 532], it was held by the Punjab State Commission that a savings bank account holder is a consumer under the

Act. It was observed that difference in the landing and borrowing rates is the consideration for rendering service by the bank.

It was also observed that even if the bank does not charge for providing cheque facility to the account holder, it cannot be said that the same is given without consideration. Actually, the cheque book facility is obtained by the depositor in consideration of his putting funds at the disposal of the bank.

- 2) In *Vimal Chandra Grover vs. Bank of India* [2000 (2) CPJ 11 (SC): AIR 2000 SC 2181], it was argued before the Supreme Court on behalf of the bank that the appellant, who took overdraft facility from the bank by pledging shares, is not a consumer within the meaning of the Consumer Protection Act.

The Supreme Court repelled the arguments of the bank and held that bank is rendering service by providing overdraft facilities to a consumer, which is not without consideration. Bank is charging interest and other charges as well in providing the service. Provision for overdraft facility is certainly a part of the banking and falls within the meaning of "service" as provided in section 2(1)(o) of the Act.

- 3) In *Shobhatai Daulatrao Talekar vs. Maharashtra Rajya Shahakari Krishi & Gramin Development Bank* [2004 (2) CPJ 349], the issue before the Maharashtra State Commission was the justifiability of the order of the District forum holding that the Forum had no jurisdiction to entertain the dispute since the complainant was a member of the defendant bank which was registered under the Maharashtra Cooperative Societies Act, 1961 and that being so, the jurisdiction would lay before the co-operative court and not before the consumer court.

The State Commission did not agree with this view. It held that the nature of service hired by the complainant pertains to the banking business which is permissible by the bank to undertake under the provisions of the Reserve Bank of India Act and the Banking Regulation Act, 1949 and as such, would be squarely amenable to the jurisdiction of a consumer forum as per the definition of "service" under section 2(1)(o) of the Act. The State Commission further held that the jurisdiction of the consumer for a is also not ousted in view of the provisions of section 3 of the Act, which provides an additional remedy over and above those available in the other statutes to the parties.

At the same time we must study the following cases which are out by the court. These cases are held under the Consumer Protection Act does not apply to banks. Some of such specific instances are enumerated below

- a) In *T.A. Abraham vs. RBI* [2001 (3) CPJ 293], RBI also came within the purview of the Consumer Protection Act. The issue before the Kerala State Commission was that the complainant had applied for a loan under the Housing Facility Scheme of the RBI, of which he was the employee. He claimed that he suffered loss and inconvenience due to delay in sanctioning of loan, which amounted to deficiency of service and for which he was entitled to compensation. The District Forum held that the complaint was not maintainable, but the State Commission before whom appeal was preferred by the complainant, held that availing a loan from an institution like RBI could be treated as "service" within the meaning of section 2(1)(o) of the Act as the opposite party's character as a banking institution cannot be in dispute. Further, as per the definition of "consumer" in section 2(1)(d)(ii), it is not necessary that actual consideration should pass to the opposite party simultaneously with the availing of service. The said definition envisages the consideration as the one, which is promised also. The State Commission

observed that when a person applied for loan and get the loan on sanctioning the same, the amount would carry interest. The same should be treated as consideration.

- b) In *Virendra Prashad vs. Reserve Bank of India* [1991 (1) CPJ 336(NC)], a complaint was filed before the National Commission stating that the complainant was eligible for certain advantages in his foreign currency/ rupee bank accounts but these facilities were denied by his bankers on the instructions from the RBI. The National Commission held that here was no contract of service between the complainant and the RBI and the RBI was merely discharging its statutory function. Therefore, it was outside the purview of the Consumer Protection Act.
- c) The issue before the National Commission in *IDBI vs. Krishnendu Ghosh* [1996 (2) CPR 155] was that the complainant applied for the post of Deputy Manager (legal) along with a D.D. of Rs. 50/- as examination fee. The interview letter was received by him on the same day on which interview was to be held. The bank rejected the request for e-scheduling. A complaint was filed claiming compensation for injury and mental shock. The National Commission held that payment of Rs. 50/- as examination fee was not consideration for hiring or availing of the services of the bank. Therefore, the complainant was not “consumer”.
- d) Tenant-Landlord dispute: In *UCO Bank vs. R. Chimanlal & Co.* [1994 (1) CPR 526], a dispute with the bank-landlord was sought to be settled under the Consumer Protection Act which was turned down by the Commission.
- e) In *D. Yeshodharan vs. Canara Bank* [1994 (3) CPJ 63], a complaint was lodged for denial of service benefits to an employee of the bank. National Commission held that the Consumer Court is not the correct forum for settling employer-employee dispute as an employee is not a consumer.

Following are the cases in which bank held liable for deficiency in service. In a large number of cases, banks have been pulled up for deficiency in service and compensation has been awarded to complainants by the Consumer Courts. Some of the important cases are analysed hereunder

- a) Refund of Bank deposit : : *P. Nabhusanrao vs The Union Bank of India* (App dat 28/1990 Result 9/11/90), By the state forum, Hyderabad, Andra Pradesh in this the applicant applies for the refund of money of the deposit certificate, the bank delayed the payment of the same. The forum declares that the Bank was delayed the payment so this is consider as negligence of the service by the bank.
- b) Wrongful dishonor of Bank Draft: *SBI vs. N. Raveendran Nair* [1992 (2) CPR 400], the issue before the National Commission was that the bank refused to en-cash the demand draft on the ground that the signature of one of the two officials of the bank was missing. The State Commission held that the dishonor of the draft was due to the fault of the bank, and therefore, there was deficiency in service by the bank. A compensation of Rs.19,500/- was awarded by the Commission for the inconvenience and mental agony caused. The National Commission dismissed the appeal of the bank against the judgment of the State Commission.
- c) Non-credit of cheque collected: In *Sovintorg (India) Ltd. vs. SBI* [1999 (2) CPJ 4 (SC)], the issue before the Supreme Court was that the proceeds of the cheque deposited with the bank for collection were not credited to the account of the complainant though the same were collected by the bank. The State Commission awarded only interest of 12 per

cent for withholding of the customer's money against the complainant's claim of 24 percent interest and payment of compensation.

The National Commission, on appeal by the complainant, confirmed the order of the State Commission. On further appeal before the Supreme Court by the complainant, the Apex Court partly allowed the appeal by directing the payment of interest at the rate of 15 per cent but refused the claim of payment of compensation on the ground that the allegation of negligence was not proved.

- d) Non-issuance of proper receipt: Where the bank did not adjust the loan repaid in its books nor issue proper receipt to the complainant, the award of compensation by the District Forum for deficiency in service was confirmed by the Chattisgarh State Commission in *Jila Sahakari Kendriya Bank vs. Sarda Ram Nayak* [2004 (2) CPJ 534].
- d) Payment of lower rate of interest: In *Abha Bhanthia vs. SBI* [2004 (2) CPJ 138], the complainant had made an F.D. with the bank, which carried interest at the rate of 11.25 per cent as per the receipt issued. On maturity, bank paid lower interest @ 10.5 per cent. It was stated by the bank that the said rate of interest was the prevailing rate as per the directives of the RBI. The District Forum held that there was no deficiency in service by the bank as it followed the RBI directive. On appeal by the complainant, the State Commission held that the bank was obliged and under liability to pay interest as agreed by it and any omission or inadvertence on the part of the bank employees would not adversely affect the rights of the appellant depositor.
- e) Default by bank's agent: In *Uco Bank vs. Surendra Kumar Bara* [2004 (3) CPJ 472], the issue before the Orissa State Commission was that the complainant had opened an account with the bank under a scheme called *Laghu Bachat Yojana*. An agent of the bank used to collect the deposits from the complainant periodically and make entries in the passbook issued by the bank under his initial. The agent of the bank misappropriated a part of the money. The Commission directed the bank to refund the amount misappropriated by its agent along with interest and also to pay compensation for mental agony, harassment and cost of litigation.
- f) Interest not paid on excess amount deposited in violation of PPF rules: In a rather interesting case in *SBI vs. P.S. Krishnan* [2004 (2) CPJ 579], the Tamil Nadu State Commission was asked to adjudicate upon a case where the complainant had deposited a sum of Rs. 8,50,000/- in his PPF a/c during the F.Y. 1995-96. After a lapse of time, the bank informed the complainant that interest on the PPF a/c would be given on a total sum of Rs. 60,000/- only. The bank returned Rs. 7,90,000/- to the depositor without any interest. It was contended on behalf of the bank that the deposits in the PPF account are credited to the government account and do not form part of the bank's deposits. As per the rules of the PPF account, the maximum limit of deposit is Rs. 60,000/-. The bank is bound by the rules and is not liable for the alleged deficiencies in service.

It was held by the Commission that the brochure issued by the Directorate of small savings clearly stated that the deposits up to Rs. 50,000/- will qualify for deduction of income tax under section 88 of the I.T. Act and the interest on the balance held in the public provident fund account is absolutely free from tax. The act of the bank in retaining a huge sum of Rs. 7,90,000/- for nearly a year and returning it without interest is definitely an unjustified act. The Commission also held that the banks entrusted with the public money are in the position of a bailey and they have to function

with caution and care that is expected of a bailey. Even if the complainant was ignorant of the rules, the bank authorities ought to have been more vigilant when such a huge deposit was received by them.

The Commission went to the extent of saying that the banking authorities had gone against the professional ethics in denying the interest, which the complainant was legitimately entitled to. The Commission also held that to retain one's money and deny that person the right of interest on that amount would definitely amount to "unfair trade practice" and fall within the purview of the Consumer protection Act even otherwise.

Conclusion

Analysis of the various judgments of the Consumer Courts reveals that they have not only been awarding the value of the goods or services for the defect and deficiency in service but also the compensation for the mental agony and harassment. It is seen that in these cases against the injustice consumers are in problem against the bank. But the justice seems to have prevailed under the aegis of the Consumer Protection Act. It has been found that there is a positive justice to the consumers against the faulty banking services.

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