

(2024) 07 NCDRC CK 0078

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 1093 Of 2022

State Bank Of India

APPELLANT

Vs

Govt. T. Romana College

RESPONDENT

Date of Decision: July 30, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)
- Consumer Protection Act, 2019 - Section 58(1)(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Jai Mohan, J.C. Lalnunsanga

Final Decision: Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. This Revision Petition No. 1093 of 2022 challenges the impugned order of Mizoram State Consumer Disputes Redressal Commission, Aizawl, ('the State Commission') dated 08.04.2022. Vide this order, the State Commission dismissed Appeal No.3 of 2017 and reduced the interest of from 12% to 6% granted by the District Consumer Disputes Redressal Forum, Aizawl ('the District Forum') vide order dated 25.04.2017.

2. As per report of the Registry, there is a delay of 50 days in filing the present Revision Petition. Vide order dated 28.06.2023 passed by this Commission, the delay was condoned.

3. Brief facts of the case, as per the complainant, are that the complainant holds a Savings Account No. 10276795673 at the State Bank of India, Dawrpui Branch (OP Bank). The Bank issued two series of cheques (No. 91XXX and 96XXX). The complainant

discovered that cheque leaves 913041 and 903047 from the 91XXX series, and the last seven leaves from the other cheque book were stolen. The theft was discovered on 01.08.2014 when the complainant realized an unknown person, Lalchhuanmawia, made seven withdrawals using the stolen cheques. The last withdrawal was on 30.07.2014. A formal complaint was lodged with the bank on 01.08.2014. The bank informed the complainant that their CCTV cameras were not functioning during that period, making video evidence unavailable. The complainant also filed an FIR at the Aizawl Police Station on 11.8.2014. The complainant alleged gross negligence and serious deficiency in service by the bank, particularly due to the prolonged malfunction of CCTV cameras, which compromised security and facilitated fraudulent transactions. The OP Bank failed to check and analyze the signatures on the stolen cheques before allowing encashment. The signatures were visibly different, yet the bank processed and paid the same. As a result of the OP Bank's negligence, Lalchhuanmawia withdrew Rs.17,90,000 using the stolen cheques. The complainant demanded Rs.17,90,000 with interest at 12%. On 27-5-2015, again another fraudulent withdrawal of Rs. 80,000 was made using a previously stolen cheque. The complainant discovered this on 29.07.2015 and reported it to the bank. A bank staff member, Vanlalsangi Rokhum, admitted the fault and agreed to reimburse the Rs. 80,000, indicating a deficiency in service. The complainant contends that the bank's failure to prevent these fraudulent transactions established a pattern of negligence and deficiency in service by the OP Bank.

4. The Petitioner/OP Bank, in its Reply filed before the District Forum contended that the complainant is not authorized to file the complaint unless approved by the Secretary of the concerned department. The Bank claimed the complainant is responsible for the cheques since they were in his custody. The complainant is the main culprit and that the identified culprit, as per police findings, should be included in the case.

5. The learned District Forum vide order dated 25.04.2017, allowed the complaint and directed the Petitioner/OP as under:

"10 In view of above, we are of the opinion that Rs.17,90,000/- was withdrawn by a person other than the Complainant without the knowledge, consent and connivance of the Complainant. In other words Rs.17,90,000/- was withdrawn by practicing fraud and cheating. Thus, we hold that there were negligence and deficiencies of service on the part of the Opposite Party by failing to scrutinize and check the signatures subscribed in the Cheques in questioned and the specimen signatures of the Complainant. In fact, Banks are duty bound to thoroughly check and scrutinize signatures on Cheque leaves before allowing any encashment. Hence, we hold that the Opposite Party is liable to pay compensation to the Complainant on account of deficiencies of service which had caused loss of huge amount of moneys amounting to Rs.17,90,000/- and mental agony to the Complainant. Accordingly, we direct the Opposite Party to pay Rs.17,90,000/- to

the Complainant and Rs.20,000/- for mental agony to the Complainant. Thus, the Opposite Party is directed to pay the Complainant the above mentioned amount totaling Rs.18,10,000/- within 60 days from the date of receipt of this Judgment and Order failing which it shall carry interest at the rate of Rs.12% per annum. The said amount should be deposited to this forum in cheque in favour of the Complainant payable at Aizawl."

6. Being aggrieved by the impugned order, the Petitioner filed an Appeal and the learned State Commission vide order dated 08.04.2022 dismissed the Appeal and reduced the interest awarded by the District Forum from 12% to 6% and observed as follows:

"We have not only heard the arguments of the learned counsel for the parties but also gone through the written arguments.

The grievances of the complainant/respondent is that the CCTV footage was not made available and it was due to negligence or deficiency of service of the appellant bank The next grievance is that the signatures ascribed on the cheque were not properly verified by the bank's staff and due to this reason there was fraudulent withdrawal of Rs.17,90,000/- through the stolen cheques. The Learned counsel for the respondent inviting our attention to the cheque exhibit A(i) to G(i) contended that the signatures of the drawers in the cheque do not tally with the signature maintain in the bank. It would be worthwhile to mention here that the cheques in question have been examined by Forensic expert in connection with the Police case and the expert found that the admitted signature of the drawer and the signature of the cheque were not of the same person. For our satisfaction we have also carefully scrutinized the cheque in question and compared the signature of the drawer with his admitted signature and we have found that the signature were not of the same person.

On such comparison and on consideration of the report of the Handwriting Expert we can say with certainty that the cheques in question were not signed by the respondent Principal and those were forged. Our particular attention has been drawn to the cheque exhibit G(i) from which we have found that initially Rs.1,00,000/- (Rupees one lakh) only was sought to be withdrawn, but subsequently the amount was made Rs.10,00,000/- (Rupees Ten lakh) only both in words as well as in figure by striking out the initial amount of Rs.1,00,000/- only but subsequently zero was added in the figure portion. It can be held that the Bank officials were responsible for passing the cheque and it is a clear case of deficiency of service coupled with negligence on the part of the bank staff.

Learned Counsel for the appellant vehemently argued that the cheque in question were in the custody of the respondent and as such he was the culprit.

But the above argument in our view is devoid of merit in view of the evidence of the respondent that those were stolen from the office. That apart of another cheque of Rs.80,000/- was withdrawn from the account of the respondent even after filing of the complaint by the respondent before the appellant. However, withdrawal of this amount has been admitted by a bank staff namely Ms. Vanlalsangi Rokhum and she agreed to deposit the amount in the account of the respondent which further fortifies that it was a clear case of deficiency of service on the part of the bank. Another important aspect of the case is that the scanned cheque exhibit K(i) for Rs.80,000/- was passed for payment by the bank. The passing of the scanned cheque also proved that there was deficiency of service on the part of the bank.

The learned counsel for the appellant further argued that the respondent college is an educational institution and education being the commodity, no action could have been brought by the Principal against the bank. This argument is also devoid of any substance. In this case we are dealing with some stolen cheques which were illegally passed by the bank for payment due to negligence or deficiency of service of the concerned bank officers. The Bank officials even did not follow the guidelines given by RBI on 5.11.2014 concerning cheque related fraud cases.

In view of the above discussion, we find and hold that the appellant bank was at fault and there was deficiency of service of some bank officers. People deposit money in the bank in good faith and the manner in which the bank officials dealt with money of the depositor would definitely shatter the confidence reposed in the bank by the depositors which would eventually lead to failure of the whole banking system.

Having gone through the evidence on record and hearing the arguments advanced by the learned counsels for the parties and written assignment filed we have no hesitation to hold that there was deficiency of service on the part of the appellant bank.

Consequently we do not find any merit in the appeal and the same stands dismissed. However the interest of 12% granted by the District Forum appears to us to be on the higher side and the same is reduced to 6% per annum from the date of passing the order till payment."

7. In his arguments, the learned Counsel for Petitioner reiterated the grounds stated in the Revision Petition and asserted as under that the Respondent could not maintain the consumer complaint being government college; the police authorities had identified the culprit and he should have been impleaded as a party in the complaint; the principal is mainly responsible for not keeping the cheque books, safely in his custody and allowed the theft of the cheques; consumer complaint is not maintainable;

the principal seal on the cheques were not disputed; the signatures were as similar as original signatures of the principal; the principal did not have authority to file complaint; and the information of stolen of cheques were not given to the Bank, prior to alleged fraudulent withdrawal. He sought to dismiss the impugned orders passed by the Fora below.

8. On the other hand, the learned Counsel for the Respondent/ Complainant argued in support of the concurrent findings of the impugned orders of the learned District Forum and the State Commission. He sought to dismiss the present Revision Petition with costs. He has relied upon the following judgments:

i. Canara Bank vs. Canara Sales Corporation and Ors., AIR 1987 SC 1603;

ii. Citizen Cooperative Bank Ltd. Vs. Ritesh Mittal, 204 CTJ 211 (J&K High Court) AIR 2003 J&K 67.

iii. N. Venkanna vs. Andhra Bank, 2005 (2) CPR 75 (NC).

9. I have examined the pleadings and associated documents, including the orders of the District Forum and State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsel for Petitioner and the Respondent in person.

10. The learned District Forum issued a well-reasoned order based on evidence and arguments advanced before it. The learned State Commission, after due consideration of the facts reiterated same, except for reducing interest awarded from 12% to 6%.

11. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Act, 2019 confers very limited scope and jurisdiction on this Commission. In the present case, there are concurrent reasoned findings of the facts and the revisional jurisdiction of this Commission is limited. After due consideration of the entire material, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting our interference in revisional jurisdiction under the Act. I place reliance on the decision of Hon'ble Supreme Court in the case of **'Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269.**

12. In addition, Hon'ble Supreme Court in **'Sunil Kumar Maity vs. SBI & Anr.** Civil Appeal No. 432 OF 2022 Order dated 21.01.2022 observed as follows:-

"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State

Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

13. Similarly, the Hon'ble Supreme Court in *Rajiv Shukla Vs. Gold Rush Sales and Services Ltd.* (2022) 9 SCC 31 has held that:-

As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.

14. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is, therefore, Dismissed.

15. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

16. All pending Applications, if any, also stand disposed of accordingly.