(2024) 11 NCDRC CK 0082

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 4248 Of 2012

State Bank Of India (Erstwhile State Bank Of Travancore) & 2 Ors		APPELLANT
	Vs	
R. Vishwanatha Pai (R-1 Since Deceased Through Lrs) & Anr		RESPONDENT

Date of Decision: Nov. 21, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

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

Bench: Single Bench

Advocate: Chandrachur Bhattacharya, Manoj Kumar Dubey, C. M. Jayakumar, Amit Kumar Singh

Final Decision: Dismissed

Judgement

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

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the “Act”) against the State Consumer Disputes Redressal Commission Kerala (‘the State Commission’) Order dated 15.06.2012 in First Appeal No. 634/2011. In the impugned order dated 15.06.2012, the State Commission partly allowed the appeal and upheld the remaining order dated 26.02.2011 passed by the District Consumer Disputes Redressal Forum, Kottayam (‘District Forum’) in CC No. 135/2006.

2. For the convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. The brief facts of the case are that the complainant, along with his mother, Sulochana Bai, had availed cash credit loan facility for Rs.3,00,000/- from OP 3 Bank vide an agreement dated 04.10.2000. As security, the complainant pledged the stock-in-trade, machinery, and furniture in the shop and mortgaged 27.3 cents of land jointly owned by him and his mother. Subsequently, on 02.07.2003, he availed an additional cash credit facility of Rs. 2,00,000/- by executing another agreement. As per the loan agreement, the stock-in-trade, machinery, and furniture were to be insured, with premiums debited from his account. Initially, the complainant had obtained insurance policies from the New India Insurance Company. However, due to tie-up arrangements between OPs 1 to 3 and OP-4 Insurance Company, the complainant's policies were shifted to OP-4. The complainant was assured that OP-3 would handle policy renewals, including premium payments, which would be debited from his account. He submitted stock statements to OP-3 at fortnightly intervals. On 01.11.2005, at about 11:30 PM, a fire broke out at the complainant's shop, completely destroying the stock and property, resulting in loss of approximately Rs. 14,00,000/-. He approached OP-4 for inspection and assessment of the loss. It was then discovered that the insurance policies had lapsed. Upon further inquiry, he learned that the stock and machinery had been insured with OP-4 under two policies: one for Rs. 4,00,000/- which expired on 22.06.2005, and another for Rs. 4,00,000/- which expired on 07.09.2005. The complainant asserted that failure of OPs to renew the policies, constituted negligence and deficiency in service.

4. In their written statement, OPs 1, 2 and 3 denied the existence of any agreement obligating them to insure goods and items pledged in the bank. OP-3 did not provide such a service and did not charge any fees for insurance premiums. There was no consideration for the alleged service. The complainant, being a large-scale businessman with other income sources, was not a customer entitled to such service. OPs 2 and 3 argued that the responsibility to remit insurance premiums and renew the policies rested with the complainant. OP-3 further clarified that it did not have a tie-up with OP-4, although it had occasionally paid premiums at the complainant’s request. It was not feasible for the bank to pay premiums on behalf of customers. As per the agreement, the policy certificates were to be retained by the bank, and it was the complainant’s responsibility to ensure that the risk to his goods was covered by a valid policy. The complainant failed to submit stock statements as agreed. OPs 2 and 3 denied his claim of a loss of Rs. 14,00,000/- and contended that there was no deficiency in service. OP-4, in its response, contended that it had no obligation to inform him about policy expiry. OPs prayed for dismissal of the complaint.

5. The learned District Forum vide Order dated 26.02.2011, allowed the complaint with the following order:

“In view of the finding in point No. 1 and 2. Petition is allowed and petitioner is entitled for the relief sought for. In the result the opposite parties 1 to 3 are ordered to pay the petitioner an amount of S. 12 lakhs to the petitioner as compensation for the

deficiency in service committed by the 3rd opposite party.

Petitioner is entitled for 9% interest for the award amount form 1.11.2005 till realization. Since interest in allowed no further compensation is ordered. Opposite party is Ordered to pay Rs. 3,000/- as litigation cost."

6. Being aggrieved by the aforesaid order, OPs filed First Appeal No. 634/2011. The State Commission vide Order dated 15.06.2012 partly allowed the Appeal with the following observations: -

"13. So it is pertinent to notice that as per the agreement between the parties the stock in trade, machinery and furniture in the shop were to be kept insured in the joint names of the appellants and the complainant. It is also pertinent to notice that the policies were to be retained by the bank. Further as and when the premiums were due it would be paid by the bank and credited in the account of the complainant These provisions clearly imply that there was implied obligation on the part of the appellants to keep, the stock in trade, machinery and furniture pledged by the complainant/insured so long as the facility granted to the complainant was not closed by the bank for valid reasons. Admittedly Exts. A9 and A10 policies kept by the bank were not renewed at the appropriate time. As a result when the fire mishap occurred, the machinery, furniture and stock in trade pledged with the bank were not covered by valid insurance and as a result the complainant sustained loss. As per the provisions in the agreement between the parties there was obligation on the part of the bank to keep these items insured and therefore failure to do so was clear deficiency in service on the part of the 3" opposite party and the finding of the Forum to that effect is only to be sustained.

14. But It appears that the Forum erred in holding that the complainant is liable to be compensated to the extent of Rs. 12 lakhs that is, the sum assured in the policies. It is pertinent to notice that, assuming that there was valid insurance cover the insurance company would pay the assured in the policies. It the actual loss exceeded the insured amount Otherwise, the insurance company would pay only the actual loss suffered by the complainant. The deficiency in service is also only to the corresponding extent and not more. So, it becomes relevant to scan the evidence to see the actual loss sustained. In this regard the only acceptable evidence available is that of DW3, the Asst. Station Officer who was in charge of the fire force engaged in extinguishing the fire and Ext. A4 report filed by him. As per Ext.A4 the articles involved in the fire incident were worth Rs. 10.lakhs. The damage sustained by the articles inside the shop amounted to Rs.4,40,000/-. In addition the building was damaged to the tune of Rs.10,000/-. So, the total loss was Rs.4.5. lakhs. As DW3 he explained that in arriving at the above figures he relied on the version of the complainant himself and his own estimate. The oral evidence of the complainant

alone is not sufficient to assess the loss suffered by him. In the absence of better evidence Ext A4 and the oral evidence of DW3 will have to be relied on to assess the loss sustained by the complainant. If that be so, complainant is entitled to realize compensation of Rs.4,50,000/- from opposite parties 1 to 3. The order of the CDRF, Kottayam requires modification to that extent.

In the result, the appeal is partly allowed. The compensation awarded to the 1st respondent/ complainant is reduced to Rs 4,50,000/- (Rupees Four lakhs fifty thousand). The complainant would be entitled to interest at the rate of 9% per annum from the date of filing the complaint till the data of realization for the compensation awarded. The complainant is also allowed to realize the costs awarded by the Forum."

7. Dissatisfied by the State Commission order, OPs filed this Revision Petition before this Commission with the following prayer:

"a) Allow the present Revision Petition with costs.

b) Set aside the Order Dt. 15.06.2012, passed by the Hon'ble State Consumer Disputes Redressal Commission, Thiruvananthapuram, in Appeal No. 634/2011.

c) Pass such other further Order or relief, as may deem fit and proper in the facts and circumstances of the case."

8. The learned counsel for the OP Bank argued that the State Commission, in its order dated 15.06.2012, erred in finding that there was an "implied obligation" on the part of the Petitioner/Bank to insure the complainant's pledged stock, machinery, and furniture during the loan period. The agreement lacked any express clause imposing such a duty on the bank. The State Commission misinterpreted the terms of the loan agreement, and incorrectly concluded that the bank was responsible for insuring the pledged goods, which led to a wrongful determination of deficiency in service. He asserted that the sanction letter dated 04.10.2000, particularly Clauses 5 and 6, clearly placed the responsibility for insuring the pledged goods and property on the complainant, covering fire and theft risks. There is no obligation on the Bank to arrange or renew insurance. It was the complainant's duty, as per the agreement, to maintain continuous coverage for the pledged items, thereby safeguarding the bank's interests in the event of loan default. He further pointed to Clause 5 and Clause 9 of the Agreement for Hypothecation and Guarantee which placed the responsibility for insurance on the complainant, not the Bank. He argued that the District Forum and State Commission misinterpreted these provisions, wrongly assigning the obligation to the Bank. Lastly, they challenged the State Commission's finding on damages, asserting that the Commission's reliance on DW-3, the Assistant Station Officer, was flawed. The Commission had determined a loss of Rs. 4.5 lakhs based on DW-3's testimony, which was derived from the complainant's own estimates. They contended that this reliance was inconsistent, as the Commission had previously stated that the complainant's oral evidence alone was

insufficient to assess the loss.

9. The learned counsel for the complainant emphasized the facts outlined in the complaint, asserting that there is no need to interfere with the State Commission's order. He referred to relevant paragraphs of the impugned order and asserted that the State Commission, rightly concluded that the bank had an obligation under the agreement to insure the items pledged by the complainant and that the failure to insure the goods amounted to a clear deficiency in service. He reiterated the State commission’s reliance on the testimony of DW-3, the Assistant Station Officer, according to whom the total value of the goods in the shop was Rs. 10,00,000, but the damage sustained to the articles amounted to Rs. 4,40,000, and the building damage was estimated at Rs. 10,000. Based on this evidence, he submitted that the State Commission reduced the damages from the District Forum's amount of Rs. 10,00,000 to Rs. 4,50,000. He argued that the findings of the State Commission should be upheld.

10. The learned counsel for OP-4 Insurance company argued that the sole issue concerning OP-4 was whether the insurer was liable to indemnify the insured when there was no existing policy at the time of the loss. He submitted that the two insurance policies issued by OP-4 expired on 22.06.2005 and 07.09.2005, respectively, and that the alleged fire occurred on 01.11.2005, after the policies had lapsed. Therefore, the insurer was neither a necessary nor proper party. The counsel further argued that the complaint should be dismissed in relation to the insurer, as there is no policy in force at the time of fire. The counsel emphasized that both the District Forum and the State Commission have correctly concluded that there was no liability on the insurer, as no valid policy existed at the time of the incident, and no deficiency of service occurred. He also noted that the State Commission’s reduction of compensation was based on the fact that the policies had expired before the fire. The Counsel further argued that insurance was a contract between the insurer and insured, valid only if premiums were paid. The insured had failed to pay the premium or submit a proposal for renewal, and the insurer could only renew the policy upon the insured’s request, which had not been made. In conclusion, he maintained that the petition against the insurer lacked merit and should be dismissed.

11. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties. It is undisputed that the complainant, along with his mother, availed a cash credit loan of Rs. 3,00,000/- from OP Bank on 04.10.2000 and a further loan of Rs. 2,00,000/- on 02.07.2003. As security, they pledged stock-in-trade, machinery, and furniture, and mortgaged land. Admittedly, a fire accident occurred on in the shop of the complainant on 01.11.2005, damaging his property. The complainant alleged that OP bank was responsible for insuring the property as per the loan agreement, but the bank denied this obligation. It is the case of the complainant that due to non-renewal of the policies, the property remained uninsured, and as a sequel, OP-4 failed to compensate the complainant. The complainant alleged deficiency in service by the OP Bank. The primary issue thus is

whether an agreement existed between the complainant and OP Bank that obligated the bank to renew the complainant's policies in the event of a lapse, and whether the bank failed to fulfil this obligation, thereby, constituting deficiency in service. In this regard, the following clauses of the agreement are relevant:

Clause 5 of the 'Terms and conditions for Working Capital Loan':

"The stocks and the buildings in the property offered as security should be insured against fire, riot; and strike risks with approved Insurance company in the joint names of the Bank and yourself. Premium as and when due should be paid on your account."

Clause 5 of the 'Terms and conditions for Medium Term Loan':

"The machinery/ equipment. Hypothecated / pledged to the Bank should be insured against all risks like fire/strike riot including theft in the joint names of the bank and the borrower with bank clause attached. The relative policy along with the premium paid receipts should be remained with us."

Clause 5 of the 'Agreement for Hypothecation and Guarantee':

"That the said goods shall be kept at the Borrowers risk and expense in good condition and fully insured against loss or damage as may be required by the Bank."

Clause 9 of the 'Agreement for Hypothecation and Guarantee':

"That the Borrower will submit to the Bank monthly or oftener as may be required statements of the goods and other assets hypothecated to the Bank in the form prescribed by the Bank from time to time with list of current insurance policies and amount attached duly verified by certificates of the Borrower that the quantities and amounts stated are correct and that all the said goods and other assets are fully covered by insurance and will also furnish and verify all statements, reports, returns, certificates and information and will also execute all documents and do all acts and things which the Bank may require to give effect hereto and the Borrower authorises the Bank and each of its Agents and Nominees as Attorney for and in the name of the Borrower to do whatever the Borrower may be required to do hereunder."

12. Plain reading of the above clauses reveals that, as per the terms of agreement, it was the complainant's obligation to insure the goods at their own expense, and there is nothing on record to conclude that the OP Bank had assumed any such responsibility. In the absence of any specific evidence indicating that the OP Bank undertook the role to renew the insurance policies or had an arrangement with the insurer, the assertions of the complainant alone cannot establish otherwise. The learned District Forum, in its order, noted that the Fire Officer (DW-3), during cross-examination concerning the fire report, testified that the calculations were based on guesswork. Further, mere existence of clauses

stipulating that the stock-in-trade, machinery, and furniture in the shop were to be insured in the joint names of OPs and the complainant, or that the premiums, when due, would be paid by the Bank and debited to the complainant's account, does not in itself impose any additional obligation on OP Bank. If such an obligation was intended, it should have been explicitly included in the terms and conditions agreed upon by the parties, which was not done. Therefore, the complainant's liability to secure their insurance interests persists.

13. Based on the deliberations above, no deficiency in service on part of the OPs is established with respect to the dispute in question. The orders of the learned State Commission and the District Forum dated 15.06.2012 and 26.02.2011 respectively suffer material irregularity due to erroneous appreciation of facts and liabilities of the partiers in the case and the thus set aside. Revision Petition No. 4248 of 2012 is, therefore, allowed and the complaint is dismissed. There shall be no order as to costs.

14. All pending applications, if any, are also disposed of accordingly.