

Times Guarantee Financials Ltd. Vs Snehal Prakash Gavankar

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Nov. 13, 2014

Citation: 2015 2 CPJ 298

Hon'ble Judges: J.M.MALIK J.

Judgement

1. THIS order shall decide the two cross -revision petitions, detailed above, by a common judgment. Mrs. Snehal P. Gavankar, the complainant

and Times Guarantee Financials Ltd., the OP, entered into an agreement wherein the OP undertook the management of the complainant's shares

investment portfolio for the period of one year, which period was subsequently extended. On 4.3.1994, the OP made a specific offer to the

complainant terminating her portfolio to 15% appreciation level by making good the losses by infusing funds from Times Guarantee for the

differential amount between the closing portfolio on the date of prices as on 28.2.1994, irrespective of losses incurred by the complainant. Further,

the OP offered to infuse and endorse accordingly on 11.3.1994. Thereafter, on 24.4.1994, OP wrote a letter contending that there is negative

cash balance of Rs. 30,369.82 and it purported to make adjustment on issue of rights, bonus shares of items beyond specific offer made earlier.

According to the OP, net amount payable to the complainant after this adjustment comes to Rs. 80,161.25 out of Rs. 1,56,811.07 which was

payable. The complainant disputed the same but preferred to accept the amount offered at Rs. 81,161.25, under protest. She claimed the residue

amount before the District Forum. The District Forum dismissed the complaint.

2. THE State Commission, however, partly allowed the appeal filed by the complainant and passed the following order:

1. Impugned order dismissing the Consumer Complaint stands set aside.

2. Respondent/opponent to pay Rs. 33,649.82 along with interest @ 15% p.a., w.e.f. 27.4.1994, till its realization.

Respondent/opponent to bear their own cost and pay Rs. 25,000 as cost to the appellant/complainant.

3. Aggrieved by the order of the State Commission, both the parties have filed the above said cross revision petitions.

3. REVISION Petition No. 1757 of 2012, has been filed by the complainant, with delay of 273 days. Since cross -revision petition is pending,

therefore, we condone the delay. RP1757/2012 is, however, dismissed.

4. WE have heard the authorized representative Mr. P.K. Gavankar, for the complainant and Mr. Mani Kumar Srivastava, Counsel for OP. The

authorized representative Mr. P.K. Gavankar, vehemently argued that the complainant is a consumer. He submits that this case was filed prior to

the amendment vide Act of 2002 of the C.P. Act, 1986. He contended that this is a case of settlement of accounts. He further pointed out that all

these facts were admitted when the negotiations of compromise were going on. He has placed Annexure 1, a set of the above said

correspondence.

We are of the considered view that the complainant is not a consumer. This is a case of shares and settlement of accounts for which this

Commission cannot arrogate to itself the powers of a civil Court.

5. IN Morgan Stanley Mutual Fund v. Kartick Das, : II (1994) CPJ 7 (SC) : (1994) 4 SCC 225, para Nos. 26, 27,.....33, 34 and 35 are relevant,

which are reproduced here, as under:

26. The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or

consumption. The meaning of the word "consumer" is broadly stated in the above definition so as to include anyone who consumes goods or

services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or costs of

goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre

of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

27. In the light of this, we will have to examine whether the "shares" for which an application is made for allotment would be "goods". Till the

allotment of shares takes place, ""the shares do not exist"". Therefore, they can never be called goods.....

33. Certainly, Clauses (iii) and (iv) of Section 2(1)(c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any

unfair trade practice has been adopted. The expression "unfair trade practice" as per rules shall have the same meaning as defined under Section

36A of Monopolies and Restrictive Trade Practices Act, 1969. That again cannot apply because the company is not trading in shares. The share

means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on

the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into

existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a "consumer" under the Act. 34. From

the above discussion, it is clear that the question of the appellant company trading in shares does not arise.

35. In view of our answers to Questions 1 and 2, it follows that the Consumer Disputes Redressal Forum has no jurisdiction, whatsoever.

6. THE same view was also taken in ""A. Asaithambi v. Company Secretary, Satyam Computer Services Ltd. & Ors."" by this Bench. The Hon"ble

Supreme Court, vide order dated 14.12.2012, in Special Leave to Appeal (Civil) No. 36840 of 2012 (A. Asaithambi v. Company Secretary,

Satyam Computer Services Ltd. & Ors.), dismissed the case in limine.

This view is further supported by the case of Dr. V.K. Agarwal v. M/s. Infosys Technologies Ltd. & Ors., : I (2013) CPJ 373 (NC) = OP No.

287 of 2001, decided on 24.7.2012, by this Bench.

7. IN a recent authority in the case of Ganapati Parmeshwar Kashi & Anr. v. Bank of India & Anr., First Appeal No. 362 of 2011, the National

Commission, headed by Hon"ble Justice Ashok Bhan, was pleased to hold :

Apart from this, State Commission also held that since the appellants had alleged that they had suffered loss as they could not trade due to

suspension of accounts, were not consumers as the dispute related to loss and profit from the share business of the appellants. We agree with the

view taken by the State Commission. Bank could not continue the Demat Account, in violation of the terms and conditions laid down by the

NDSL and RBI. Appellants had admittedly failed to furnish the identity proof by submitting copies of PAN cards, etc., as per directions of NDSL

and RBI. For Demat Accounts, Respondent Bank is bound by the directions issued by NDSL and RBI. Dismissed.

8. THE aggrieved party went to the Supreme Court against the above said order. The Apex Court dismissed the Special Leave Petition on

14.1.2013 and held, as under:

(ii) The concurrent findings recorded by the State Consumer Disputes Redressal Commission, Maharashtra and the National Consumer Disputes

Redressal Commission that the petitioners cannot be treated as "consumer" within the meaning of Section 2(d) of the Consumer Protection Act,

1986, is based on analysis of the pleadings filed by the parties. The DMAT Account was opened by the petitioners purely for commercial

transactions. Therefore, they were rightly not treated as "consumer" so as to entitle them to claim compensation by filing complaint under the 1986

Act.

This view stands fortified by a recent judgment of this Commission reported in "" Vijay Kumar v. Indusind Bank, : II 2012 CPJ 181 (NC)"" , wherein

it was held:

10. Again, such like question arose for consideration before National Commission in case of Som Nath Jain v. R.C. Goenka & Anr, reported in, I

(1994) CPJ 27 (NC). In that case, dealing with sale -purchase of shares, National Commission expressed serious doubt, whether the complaint,

qua, it would be maintainable under the Consumer Protection Act. Because, qua such transactions, elaborate evidence need to be taken regarding

purchase and sale of shares, their prevalent price in the market and evidence regarding passing of instructions by client to the broker. Resultantly,

the complainants were relegated to get the dispute decided through civil Court.

9. WEST Bengal State Consumer Disputes Redressal Commission, Kolkata, in case Ramendra Nath Basu v. Sanjeev Kapoor & Ann, reported

in, 1 (2009) CPJ 316 qua share trading has held that transactions between parties do not come under purview of Consumer Protection Act, 1986.

10. SIMILAR view was taken by the Delhi State Consumer Disputes Redressal Commission, New Delhi in case Anand Prakash v. A.M. Johri &

Ors., reported in, III (2000) CPJ 291, by holding that ""sale -purchase of shares are commercial transactions, so, the complainant is not a

"consumer", in such cases"".

Consequently, we hold that the complainant is not a consumer. We accept the revision petition filed by the Times Guarantee Financials Ltd. (RP

2537 of 2011) set aside the order of the State Commission and dismiss the complaint. However, the complainant, in both cases, is given liberty to

get redressal of her grievances before the Civil Court or the appropriate Forum. The Complainant can seek help from Laxmi Engineering Works v.

P.S.G. Industrial Institute, : II (1995) CPJ 1 (SC) : (1995) 3 SCC 583, in regard to point of limitation.