

(2001) 12 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SUMANPREET SINGH

APPELLANT

Vs

GURVINDER SINGH

RESPONDENT

Date of Decision: Dec. 27, 2001

Citation: 2002 2 CPC 248 : 2003 4 CPJ 411

Hon'ble Judges: K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision: Appeal disposed of

Judgement

1. THE present appeal has been filed against order dated 30.4.2001 in Complaint Case No. 962 of 1997, passed by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh (for short hereinafter referred to as the District Forum-I).

2. THE contextual facts may be briefly narrated as under : THE appellant/complainant, Sh. Sumanpreet Singh, resident of 2985, Phase-7, SAS Nagar, Mohali, purchased 10 shares of ACC Ltd. @ Rs. 1,719.20 through Sh. Gurvinder Singh impleaded as O.P. No. 1 who ran his firm in the name and style of M/s. Sahil Investment Consultants. Payment for these shares was made through adjustment against the shares sold by Mr. Sumanpreet Singh through respondent No. 1/O.P. No. 1. THE respondent No. 1/O.P. No. 1 gave two shares certificates (each for 5 shares) bearing No. 801560 & 00607136 to the appellant/complainant on 21.8.1993. THESE share certificates when sent by the complainant to the company i.e. ACC Ltd. for the purpose of transfer, Certificate No. 00607136 (5 shares) was withheld by the Company for being tainted i.e. involved in the infamous securities scam. Copy of the letter sent by the company to the appellant/complainant has been brought on record. However, after prolonged correspondence with the company the

appellant/complainant was eventually informed by the Company i.e. ACC Ltd. on 3.12.1998 that they could not transfer the 5 disputed shares as they had not received the form of application/certificate of the stock exchange for their release. THE company asked the appellant/complainant to do the needful at his end advised him to contact his main broker in this regard. This letter of the company has also been brought on record. On receiving this information the appellant/complainant approached the respondent No. 1/O.P. No. 1 and informed him that his assurance to the appellant/complainant that the form of application/certificate of the stock exchange have already been sent to the company have been proved wrong. He also advised the respondent No. 1/O.P. No. 1 to take the matter seriously or else he will take recourse to a Court of Law, photocopy of the same has been placed on record of the complaint case. THERE was no response thereafter from the respondent No. 1/O.P. No. 1.

The appellant/complainant has alleged to have suffered a loss of Rs. 41,978/- i.e., Rs. 15,900/- being the difference of peak price and value of the share on 7.10.1997, loss of 24% interest on Rs. 25,100/- i.e. the peak value of 5 shares from September, 1994 to December 1997. He has also claimed Rs. 5,000/- towards mental agony and harassment and Rs. 2,000/- towards costs i.e. legal expenses.

The appellant/complainant has made the above averments through a sworn affidavit.

3. THOUGH notice was issued to OPs by the learned District Forum none appeared and the case was decided ex parte. The learned District Forum held the view that the case pertained to "day to day" share dealing of a client with a share broker and was hence a matter of the nature of Civil Court. It also held that view that since the complainant has not been able to bring on record the brokerage in respect of the tainted shares in dispute so the alleged service rendered by O.P. under a contract of personal service the complainant case does not fall in ambit of Consumer Protection Act, 1986 (for short hereinafter to be referred as the C.P. Act) and requires adjudication in a regular Civil Court. The learned District Forum-I, therefore, opined that the complainant is at liberty to approach appropriate Civil Court and disposed of the complaint with these observations.

In the appeal which has been filed within the limitation period, the appellant/complainant has reiterated that it is a case of clear cut deficiency in service and hence it lies well within the jurisdiction of the C.P. Act and to this extent the learned District Forum-I has failed to exercise a jurisdiction vested in it. He has also clarified that the respondent No. 1/O.P. No. 1 always imposed a transaction cost

each time its services were used and the element of specific consideration passed on by the appellant/complainant to respondent No. 1/O.P. No. 1 in respect of the shares in dispute stood clearly proved by the contract note and delivery note issued by the respondent No. 1/O.P. No. 1 itself.

4. ON behalf of the respondent No. 1 nobody appeared inspite of service having been completed. ON 28th August, 2001, Mr. I.S. Ratta, Advocate made appearance belatedly on behalf of the respondent No. 1/O.P. No. 1 and he was informed of the next date of hearing i.e. 11th September, 2001. However, thereafter no one appeared on behalf of the respondents/OPs.

On 26th November, 2001 fixed for arguments, the appellant/complainant sought time to refer some case law in support of his case and the same was granted. On the next date of hearing i.e. 13th December, 2001 though the appellant/complainant could not refer to any specific case/earlier judgment, however, he mentioned that a similar case had been adjudicated by this Commission itself, he however, could not give the number of the said case. The appellant/complainant verbally prayed that the value of 5 shares in dispute alongwith interest thereon should be paid to him by the respondent No. 1/O.P. No. 1.

We have gone into the records of the case with utmost care and have also taken into consideration our direction on a similar appeal case i.e. Appeal No. 21 of 2000, Sh. Kashmiri Lal Goyal v. Dr. Tersem Zindal, decided on 17.9.2001 referred to by the appellant/complainant. On merits, the factum of investment and shares etc. stands confirmed. Further the view expressed by the learned District Forum-I that the complainant has not been able to bring on record the element of specific consideration passed on by him to the broker and hence the service rendered by the respondent No. 1/O.P. No. 1 does not fall in the ambit of C.P. Act, 1986 is contrary to the well settled law that the price of share includes consideration for affecting transfer of shares and hence the complainant is held to be a consumer, 1998 (1) CPP 400(Pb). It is, therefore, our considered view that there is a clear deficiency in service on the part of the respondent No. 1/O.P. No. 1 in not getting the 5 shares under dispute transferred in the name of the appellant/complainant, the claim of the appellant/complainant regarding loss of Rs. 15,900/- suffered by him due to the difference in the peak value and the value of the shares on October 7, 1997 cannot be allowed as it has been the consistent view of this Commission in the cases of Surinder Kumar v. Managing Director, Reliance Consultantly Services Ltd. & Anr., I (1998) CPJ 594=1998 (1) CPC 232, and Sh. Kashmiri Lal Goyal v. Dr. Tarsem Jindal (supra) that it cannot go into the loss alleged to have been based on the allegations

which are purely speculative in nature. We, therefore, leave it to the appellant/complainant to seek remedy in this regard before an appropriate Forum.

5. HAVING carefully considered the material on record, we deem it appropriate that a sum of Rs. 8,596/- i.e. the price at which 5 shares in dispute were bought and interest @ 10% per annum on this amount with effect from 21.11.1993 till the date of realization will be adequate compensation for deficiency in service on the part of the respondent No. 1. Apart from this the appellant would be entitled to get the costs of litigation which we quantify at Rs. 1,000/-. Resultantly the appeal is allowed and the order of the District Forum-I is modified to the extent that instead of the directions given by the District Forum-I, the appellant shall be entitled to get a sum of Rs. 8,596/- plus interest @ 10% p.a. on this amount from 21.11.1993 to the date of realization as compensation for deficiency in service on the part of the respondent No. 1, Sh. Gurvinder Singh. The appellant/complainant shall also get costs of litigation which are quantified at Rs. 1,000/-. The respondent No. 1/O.P. No. 1 shall pay the amount of compensation within a period of two months from the date of receipt of copies of this judgment, failing which this amount shall carry interest @ 10% p.a. till payment. The complaint is disposed of accordingly. Copy of this judgment be sent to the parties free of charges. Appeal disposed of.