

(2003) 02 NCDRC CK 0066

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION****Case No:** None

L.I.C. MUTUAL FUND

APPELLANT

Vs

KASHMIRAN MATHUR

RESPONDENT

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**Date of Decision:** Feb. 19, 2003**Citation:** 2003 1 CPR 677 : 2003 2 CPJ 243**Hon'ble Judges:** Chowdhry , S.N.Mishra , S.Hansda , Sumitra Kumari J.**Final Decision:** Appeals dismissed

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**Judgement**

1. IN these three appeals, the appellants have challenged the judgment and order dated 23.12.1999 passed in Complaint Case Nos. 244/1998, 132/1998 and 9/1999 on the file of the District Consumer Forum, Bokaro, whereby the appellants have been directed to pay the repurchase value of the units along with interest at the rate of 18% p.a. besides, a sum of Rs. 4,000/- by way of compensation as well as litigation cost within the time mentioned in the order itself. Since all these appeals arise out of the common order and the appellants and the question of law involved are the same, these appeals have been heard together and are being disposed of by this common order. The necessary facts for disposal of these appeals are that the complainants/respondents have purchased 1,000 units under LIC Mutual Fund, Dhanvarsha (3) Scheme on 1.5.1991 for a period of 5 years which was matured on 30.11.1996. On expiry of maturity period, the complainants submitted their certificates for repurchase but till date they have not received the repurchase value inspite of repeated requests made to the appellants, as a result, the complainants approached the District Forum, Bokaro, for obtaining the refund of the repurchase value, details whereof, have been mentioned in the order impugned along with interest @ 18% p.a. with effect from the date of submission of the certificates till the payment is made.

2. THE opposite parties, the appellants, appeared and filed a written statement stating inter alia, that on receipt of the certificates the appellants issued cheques for repurchase value of different accounts to the complainants/respondents under registered post on different dates to the address available on the record. THE said cheques were not received by the complainants and it was transpired that the cheques issued were encashed by some imposters through Tripura State Cooperative Bank, Agartala as well as the Saving Bank Account at G.P.O., Gauhati respectively. It is alleged that the correspondences were made by the appellants both to the Superintendent, Post Offices, Gauhati as well as DGP. After hearing the parties and on consideration of the materials on record, the District Forum, Bokaro, has passed the order impugned as stated above.

Learned Counsel appearing on behalf of the appellants in the aforesaid appeals has challenged the order mainly on the ground that on receipt of the repurchase certificates, the appellants issued cheques for maturity amount to the respective complainants at the given address through registered post but, unfortunately, the said cheques were encashed by some imposters at Gauhati and Agartala for which, necessary steps have been taken to ascertain the factual position. It is further alleged that since the cheques were encashed fraudulently by some imposters and hence the Consumer Courts have no jurisdiction to adjudicate such disputes between the parties.

In opposition, learned Counsel appearing on behalf of the complainants/respondents has, however, supported the order of the District Forum and submits that even though the cheques were alleged to have been sent to the complainants, but admittedly, the complainants have not received the cheques which have been encashed by some imposters at different places. There is no element of fraud involved in such disputes on the part of the complainants and hence the appellants are liable to pay the repurchase value of the units along with compensation for their mental and physical harassment.

3. HAVING regard to the submissions made on behalf of the parties, the only question arises as to whether mere issuance of cheques under registered post, the appellants are absolved from the liability of paying the repurchase value to the complainant even though the cheques, did not reach the complainants who are the unit holders under the scheme aforesaid. In our view, having regard to the law laid down by the State as well as National Commission, the answer to the question will be rendered in negative. In the case of Unit Trust of India v. V.S. Subramaniam & Ors., reported in I (1999) CPJ 459, it has been held that mere issuance of cheques

through registered post will not be enough to deny the liability and appellants are bound to pay the repurchase value to the complainants/respondents on maturity of the units even though cheques sent through registered post have not been delivered to the complainants. Again it has been held in the case of Unit Trust of India v. Mohd. Ausaf & Ors., reported in 2000 (2) CPR page 212, to the effect that mere sending the cheque through registered post does not amount to discharge of its liability.

After having heard the learned Counsels for the parties and taking the materials available on record into consideration including the decisions cited above, we are of the view that there is no merit in these appeals. In the result, the appeals fail and are dismissed with cost assessed at Rs. 1,000/- (Rupees one thousand).

4. BEFORE we part with the cases, the appellants are directed to comply with the order within three weeks from the date of receipt and/or production of copy of this order failing which, the complainants/respondents will be at liberty to execute the order in accordance with the law and, in that event, the complainant will be further entitled to the interest @ 18% from the date of this order till the date of realisation. Let a copy of this order be sent to the parties and/or handed over to their respective Counsels forthwith for needful. Appeals dismissed.