

(2003) 08 NCDRC CK 0068

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

STATE BANK OF INDORE

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Aug. 14, 2003

Citation: 2004 3 CPR 621 : 2004 4 CPJ 152

Hon'ble Judges: M.A.A.Khan , Ratan Prakash J.

Advocate: Santosh Saxena , K.C.Saxena , Dev Kumar , A.N.Gupta , Maya Jain

Judgement

1. THESE appeals by the opposite parties to Complaint No. 278 of 1999 are directed against Distt. Forum, Kota"s order dated 4.7.2001.

2. THE undisputed facts are that Western Railway, Kota Division (the complainant) is the consumer of the services of the Madhya Pradesh Electricity Board (the "Board") for supply of electrical energy in bulk at complainant"s premises at Suwasra Traction Sub-station for the purpose of Railway traction in the Varodara-Ratlam-Nagda-Kota route. As per terms and conditions of the agreement, made between them on 5.6.1987, the complainant railway was required to pay the bill of charges within 21 days of the date of the bill failing which a surcharge at the rate of 2 per cent of the amount of bill was chargeable from the complainant.

For the month of September, 1998 the Board raised a demand of Rs. 87,69,519/- against the complainant through two bills one for Rs. 85,11,605/- and the other for Rs. 2,57,914/- both dated 16.10.1998. The due dates for making payments of the amounts in the two bills by cheque was 3.11.1998 and in cash or by Demand Draft it was 6.11.1998. The complainant Railway obtained on 3.11.1998 11 Demand Drafts

from the State Bank of Bikaner and Jaipur, Branch at Kota (Kota bank) for the aforesaid amount of Rs. 87,69,519/- and delivered the same to the Board on 6.11.1998. The drafts had been drawn on State Bank of Indore, Branch Mandsaur (M.P.) (Mandsaur bank). The complainant delivered the DDs for Rs. 87,69,519/- to the Board on 6.11.1998 i.e., by the due date. The Board delivered the same to their Banker namely State Bank of India, Mandsaur (SBI Mandsaur) for collection. The Mandsaur Bank, however, declined to honour the drafts for want of any "Advice" to them from Kota bank in that behalf. They, therefore, returned the same to SBI, Mandsaur on 7.11.1998. However, the Mandsaur bank received the drafts back on 8.11.1998 and remitted the amounts of the drafts to State Bank of India, Mandsaur, which credited the same in Board's account on 9.11.1998.

In the bills for the month of October 1998, the Board charged a sum of Rs. 1,37,294/- from the complainant on account of "surcharge for delayed payment (SDP)". The complainant paid the aforesaid amount under protest and filed the complaint alleging deficiency in service on the part of the present appellants and the Kota Bank.

3. THE Distt. Forum held that the appellants and the Mandsaur bank had rendered deficient service to the complainant. It, therefore, required the appellant to refund the sum of Rs. 1,37,294/- with interest at the rate of 12 per cent per annum payable from the date of payment thereof or adjust the same against the future liability of the complainant and also pay cost at Rs. 500/- to them.

The Forum required the Mandsaur bank also to pay compensation at Rs. 10,000/- and cost at Rs. 500/- to the complainant. The complaint as against Bank was dismissed. We heard the parties and examined the material on the record of the Forum. Board's Appeal No. 1182 of 2001:

4. THE learned Counsel for the appellant Board vehemently urged that as back as on 23.1.1996 the Board had taken the decision to accept the payment of Board's dues through DDs/bankers cheques, issued on a Bank other than the State Bank of India, Mandsaur (for Mandsaur Circle) provided the same was deposited at least three days earlier to due date of payment by cash and any delay in crediting the amount in the Boards Account by due date will attract surcharge as per rules. In support of

such argument reliance was placed on Board's letter dated 13.2.1996.

We find that the learned D.F. has categorically pointed out that the decision of the Board dated 23.1.1996, referred to above, was never communicated by the Board to the consumer Railways. Even in the first part of this letter the appellants themselves had accepted that payment of bills through demand drafts were treated at par with payment in cash in the past. The alleged decision of the Board was neither reflected in Board's bye-laws/regulations/rules nor was ever expressed through the conduct of the appellant. The drafts were undisputedly prepared on 3.11.1998 and were delivered to the Board on 6.11.1998. Though the drafts were drawn on State Bank of Indore at Mandsaur and not on State Bank of Indore at Mandsaur, yet the Board raised no objection against the drafts at the time of receiving them from the complainant on 6.11.1998 and delivered the same to their banker for collection from another Bank that too was located at Mandsaur. These facts clearly speak that payment of the two bills had duly been made by the consumer Railways through DDs by the "due date", as was mentioned in the bills.

Liability of the consumer Railways to pay surcharge on delayed payments of the bills in question, in fact, arose from Clauses 23 and 24 of the Agreement dated 5.6.1987 the relevant parts of which run as under:

"Clauses 23-The Board will, as far as possible within the fifteen days after the expiration of each calendar month, deliver to the consumer a bill of charges stating the number of units supplied to the consumer by the Board in accordance with the readings of the said meters and the amount payable, therefore, accordingly to the tariff applicable together with other charges payable by the consumer to the Board and the consumer shall pay the same within 21 days from the date of the bill....."
Clause 24(b)-If the Consumer fails to pay any bill as provided in Clause 23 he shall be liable to pay a surcharge of two per cent per month from the date of the bill. If the bill is not paid within twenty-one days of the date of the bill, the Board shall give the consumer seven days notice of intention to discontinue the supply of electrical energy and at the expiry of such period, if full payment has not been made, may forthwith disconnect the supply until full payment of all dues outstanding and the charges for the work of disconnection and reconnection has been made."

A combined reading of the above clauses of the agreement between the parties would show that it was with a view to enforce payment of the monthly bills by the consumer within the specified time of 21 days that penal consequences in the form of levy of surcharge and discontinuance of supply of electrical energy by the Board were contemplated. The requirement of seven days notice by the Board to the Consumer before disconnecting the supply of electrical energy to him in the event of his failing to pay the monthly bill of dues outstanding to the Board within the specified period of 21 days. (Clause 24) in fact takes the rigours of penal consequences relating to the levy of surcharge also. It means that simply technical and/or bona fide default by the consumer in making payment of the bill within the

specified or stipulated period of 21 days should not, ordinarily, attract the penal consequences of levying surcharge and discontinuing the supply of electrical energy by the Board to the consumer. It is the well recognised principle of interpretation of penal provisions contained in Statute of Agreement between the parties that such provisions should be strictly construed and where two views on the interpretation of a provision are possible the one favourable to the subject should be preferred to the other. Viewed thus also, the efforts made by the Consumer Railway to pay the two bills by the due date, their making payments of the bills through 11 DDs dated 3.11.1998 to the Board by the due date, and Board's receiving the payment of such drafts on 9.11.1998 did not attract the penal provision of Clauses 23 and 24 of the Agreement and, therefore, the levy of "surcharge for delayed payment" by the Board was not legally and factually justified. In this behalf we concur with the findings recorded and conclusions arrived at by the learned District Forum and would accordingly dismiss Board's Appeal. Bank of Indore's Appeal No. 1119 of 2001 :

5. IT was urged by the learned Counsel for the State Bank of Indore, Mandasaur that it seems to have escaped the view of the Forum that there was no privity of contract between the Consumer Railway (the "complainant") and the State Bank of Indore, Mandasaur so as to create relationship of consumer and provider of service between them respectively. The learned Counsel further submitted that whatever relationship might have been there in the present case, it was between the Railways and the Kota Bank, which had prepared the drafts on their instructions. The Kota Bank, in the context of the present matter, may, at the most, be considered to be the principal and the answering Bank its agent in the matter of rendering services to the consumer Railways. The learned Counsel added that although 11 drafts were prepared by the Kota Bank as early as on 3.11.1998 and such demand drafts had been drawn on the appellant-Bank in violation of complainant's instructions but no "advice" was sent by the Kota Bank to the appellant which it was required to send as per practice adopted in conducting inter banking business by financial institutions as per relevant rules and regulations. Under such circumstances the return of the demand drafts by the appellant-Bank to Railway's Bank for want of "advice" from the Kota Bank was justified and should not be considered as an act of deficiency in service on its part. We find force in the arguments advanced by the learned Counsel.

6. IT was evident that the Consumer Railways had hired the service of the Kota Bank for preparation of drafts for payment of the two bills to the Board. IT appears that earlier the DDs used to be drawn on State Bank of India, Mandsaur and the Consumer Railways had required the Kota Bank to prepare the demand drafts accordingly. But the Kota Bank had drawn the demand drafts on State Bank of Indore at Mandsaur, which was their "Associate Bank" at Mandsaur and in its turn the State Bank of Indore, Mandsaur was the Associate Bank of State Bank of India at Mandsaur, which was the banker of the Consumer Railways. Thus all the problems were created by Kota Bank by drawing the draft upon State Bank of Indore at Mandsaur in violations of the direction of the Consumer Railways. Kota Bank's letters of regret dated 22.2.1999 and 22.6.1999 unfold the unfortunate story of this avoidable litigation. Moreover, the Kota Bank should have sent the "advice" to the Bank of Indore at Mandsaur, which they did not. IT is really surprising that instead of expressing regret to the Bank of Indore the Kota Bank took the stand that there was no contract between the Consumer Railways and the Kota Bank to issue "advice" to its Associate Bank.

Anyway letter dated 3.3.1999 by the State Bank of Indore to the Consumer Railways explains all the story and narrates that they themselves had contacted the Kota Bank in the matter of the 11 demand drafts and after such counselling with them, they had themselves requested Railways Banker to resubmit the drafts for payment and did make the payment on 9.11.1998.

In view of the above discussion we find no fault with the appellant Bank in the matter of rendering service to the Consumer Railways. The impugned order in this respect is required to be set aside.

7. IN the result, whereas Board's Appeal No. 1182/2001 is dismissed with cost on parties. Appeal No. 1119/2001 by the State Bank of INdore at Mandsaur is allowed with cost on parties. Impugned order as against them is set aside. Ordered accordingly.