

PROCEEDINGS BEFORE A CONSUMER COMMISSION ARE SUMMARY IN NATURE AND COMPLAINTS INVOLVING HIGHLY DISPUTED QUESTIONS OF FACTS OR CASES INVOLVING TORTIOUS ACTS OR CRIMINALITY LIKE FRAUD OR CHEATING, CANNOT NOT BE DECIDED BY SUCH A FORUM/COMMISSION UNDER THE CONSUMER PROTECTION ACT, 1986

INTRODUCTION:

*The Apex Court in a decision in **The Chairman and Managing Director, City Union Bank Ltd. and Anr. Versus R. Chandramohan**¹ observed that proceedings before a State Commission or National Commission under the Consumer Protection Act, 1986, were summary in nature and therefore complaints involving highly disputed questions of facts or cases involving tortious acts or criminality like fraud or cheating, could not be decided by such State Commission or National Commission.*

FACTS:

The Appellant No. 1 is the Chairman and Managing Director, City Union Bank. The Appellant No. 2 is the Manager, City Union Bank. The Respondent (Original Complainant) had filed a complaint, being O.P. No. 103/99 against the Appellants (Original Opponents) before the State Commission under the Consumer Protection Act, 1986, seeking direction against the Appellants to re-credit Rs. 8,00,000/- covered by two demand drafts, one for Rs. 5,00,000/- and the other for Rs. 3,00,000/- in the Respondent's Current Account No. 3600 ("**said Demand Drafts**").

It was alleged in the complaint that the Respondent was the Managing Director of D-Cube Constructions (P) Ltd. ("**said Company**") having its registered office at Chennai. One Shri R. Thulasiram and one Shri R. Murali were the other directors of the said Company. A Current Account bearing No. 3600 ("**said Account**") was opened in the name of the said Company with the Appellants' bank on 13th April, 1995 and the Respondent alone was permitted to operate the said Account. Towards the end of 1996, the

Respondent had written a letter to the Appellant No. 2 on 8th January, 1997, requesting it not to allow withdrawals from the said Account.

One Ravindra, an NRI residing at Malaysia had purchased three flats in the Respondent's projects and had informed the Respondent that he had forwarded the said Demand Drafts to the Respondent.

The Respondent, on reconciliation of the accounts, found that the said Demand Drafts were not credited in the said Account of the said Company. The Appellant No. 2 did not furnish any information, despite information being sought by the Respondent.

Subsequently, the Respondent came to know through Indian Overseas Bank that the said Demand Drafts were presented through City Union Bank for clearing and the same were paid to City Union Bank, Ram Nagar Branch. The Respondent therefore once again on 3rd August, 1998, requested the Appellant No. 2, that the amount of the said Demand Drafts were credited in some other account and therefore the same be credited in the said Account.

¹ Civil Appeal No. 7289 of 2009

Thereafter, correspondence ensued between the Appellants and the Respondent and it was found that another account in the name of "D-Cube Construction" ("**Second Account**") was opened on the instructions of the said R. Thulasiram and the said Demand Drafts were credited in Second Account.

The Respondent alleged collusion and negligence on the part of the Appellants and filed a complaint under the Consumer Protection Act, 1986, ("**said Act**") before the State Consumer Disputes Redressal Commission ("**State Commission**").

The State Commission allowed the complaint and *inter alia* directed the Appellants to pay the Respondent a sum of Rs. 8,00,000/- along with compensation of Rs. 1,00,000/- towards mental agony, loss and hardship.

Being aggrieved by the order of the State Commission, the Appellants preferred the First Appeal being 29/2005, which was dismissed by the National Consumer Disputes Redressal Commission ("**National Commission**") vide an order dated 1st February, 2007 ("**Impugned Order**").

In view of the above, the Appellants preferred an appeal against the Impugned Order.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was as follows:

Whether a Commission/Forum under the said Act could have entertained a complaint involving highly disputed questions of facts or involving allegations of tortious acts?

SUBMISSIONS ON BEHALF OF THE APPELLANTS

It was submitted on behalf of the Appellants that the State Commission and the National Commission had committed an error in not appreciating the fact that in absence of any fault, imperfection, shortcoming or inadequacy in the performance, which was required to be maintained by the Appellants' bank, it could not be presumed that there was deficiency in service as defined under Section 2(1)(g) of the said Act.

The Appellants relied on the decisions of the Apex Court in *Ravneet Singh Bagga vs. KLM Royal Dutch Airlines and Another*² and in the case of *Branch Manager, Indigo Airlines Kolkata and Another Vs. Kalpana Rani Debbarma and Others*³ to substantiate their submission that the complaint filed by the Respondent was not maintainable before the State Commission and even otherwise the Respondent had failed to discharge the burden of proof that there was deficiency in service on the part of the Appellants.

It was further submitted that the said Demand Drafts were issued in the name of "D-Cube Construction" and it was on the instructions of the said R. Thulasiram, a director of the said Respondent Company, the said Demand Drafts were credited in the Second Account opened in the name of "D-Cube Construction".

As per letter dated 15th February, 1997, addressed to the Appellants by the said Company, it was stated that the said Company had no objection if current account in the name of "D-Cube Construction" was opened.

² (2000) 1 SCC 66

³ (2020) 9 SCC 424

An account was thereafter opened by the said R. Thulasiram in his capacity as the proprietor of "D-Cube Construction".

If any fraud was committed by the a director of the "D-Cube Constructions (P) Ltd.", such dispute pertaining to fraud would not fall within the jurisdiction of the State Commission or the National Commission to decide.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

It was submitted on behalf of the Respondent that when the two forums had consistently held the Appellants liable for the deficiency in service, the Apex Court could not interfere with the same.

It was further submitted that City Union Bank would be vicariously liable for the acts of its employees. As per the General Banking Principles and Guidelines laid down by the Reserve Bank of India, an account with a similar name of the company could not have been opened of which the Respondent was a Managing Director. It was submitted that without the involvement of the officers of City Union Bank, R. Thulasiram could not have encashed the said Demand Drafts in question by opening a new current account in the name of "D-Cube Construction" and accordingly there was a clear deficiency in service on the part of the Appellants.

The decisions in case of ***Kerala State Cooperative Marketing Federation Vs. State Bank of India and Others***⁴ and in case of ***Indian Overseas Bank vs. Industrial Chain Concern***⁵ were relied on to substantiate the submissions of the Respondent.

⁴ (2004) 2 SCC 425

⁵ (1990) 1 SCC 484

JUDGMENT:

Relying on the decision of the Apex Court in ***Oriental Insurance Co. Ltd. vs. Munimahesh Patel***⁶, the Apex Court observed that the proceedings before Consumer Commissions were summary in nature and the issues which involved disputed factual questions, could not be adjudicated by Consumer Commissions.

The Apex Court observed that it could not be said that there was any willful default or imperfection or short coming so as to term it as the deficiency in service on the part of the Appellants within the meaning of Section 2(g) of the said Act.

The Apex Court further observed that the proceedings before the State Commission and National Commission, being summary in nature, complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by such Forum/Commissions under the said Act. The "deficiency in service" had to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the willful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in Section 2(1)(g) of the said Act.

The burden of proving the deficiency in service would always be upon the person alleging it.

The Apex Court observed that the Respondent failed to discharge his burden to prove that there was a deficiency in service on the part of the Appellants within the meaning of Section 2(1)(g) of the Act, and accordingly allowed the

⁶ (2006) 7 SCC 655

appeal by quashing and setting aside the Impugned Order.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.