

Baidyanath Mondal v. Kanahaya Lal Rathi, (NCDRC)(New Delhi), 2022 PLRonline 0596 (NCDRC)

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Before:-C. Viswanath, Presiding Member.

Baidyanath Mondal – Petitioner

Versus

Kanahaya Lal Rathi & Ors. – Respondents

Revision Petition No. 3286 of 2016 (Against The Order Dated 19/07/2016 In Appeal No. 463 of 2014 Of The State Commission West Bengal).

29.04.2022.

Consumer Protection Act, 1986 Section 21 (b) - Consumer Protection Act, 2019, Section 58 (1)(b) - Stocks and shares - Investment in - Complainant is not a Consumer - It is not the case of the Complainant that he had invested the money in share market exclusively for earning his livelihood.

Cases Referred :-

1. *Charan Singh v. Heading Touch Hospital (2000) 7 SCC 668*
2. *M/s Steel City Securities Ltd. v. G.P. Ramesh Revision Petition No.3060 of 2011 dated 03.2.2014*
3. *Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 224*
4. *Savintrog (India) Ltd. v. SBI (1999) 6 SCC 406*
5. *United India Insurance v. Ajmer Singh (1999) SCC 400*

For the Petitioner :- Mr. Sahej Uban, Advocate with Petitioner in Person.

For the Respondent No. 3 :- Mr. Kanhaiya Lal Rathi in Person.

For the Respondent Nos. 1 & 2 :- AR.

ORDER

C. Viswanath, Presiding Member. – The present Revision Petition is filed by the Petitioner under section 21(b) of the Consumer Protection Act, 1986 against Order passed by the State Consumer Disputes Redressal Commission, West Bengal, Kolkata (hereinafter referred to as the “State Commission”) in Appeal No.463/2014 dated 19.07.2016 whereby the Appeal filed by the Complainant was dismissed.

2. The Revision Petition has been filed with a delay of 116 days. For the reasons stated in the application and in the interest of justice, the delay is condoned.

3. Case of the Complainant/Petitioner is that he purchased 2000 equity shares of Aravinda Remedies and 200 equity shares of Reliance Power Ltd. by making payment of Rs.13,700/- and Rs.49,400/- respectively. The Opposite Party delivered 1000 shares of Aravinda Remedies instead of 2000 shares amounting to Rs.6,850/- leaving a refundable amount of Rs.6,850/-. Further, the Opposite Party delivered 200 shares of Reliance Power Ltd. amounting to Rs.47,440/- leaving a refundable amount of Rs.1,960/-. When the Complainant enquired about his Demat Account, he came to know that 200 shares of Reliance Power Ltd. were transferred to the account of Ureka Stock & Share Broking Services without intimation to the Complainant. The Opposite Party also did not make payment of Rs.27,480/- being the differential price of the shares which were credited to the Demat account of the Complainant. Aggrieved by non-refunding of the aforesaid amount by the Opposite Party, the Complainant filed Consumer Complaint No.72/2011 before the District Forum with the following prayer: –

” (a) To pay the claim for excess payment of Rs.6,850/-, Rs.1,960/- and differential amount of Rs.27,480/- alongwith interest @ 14% p.a. on profit/gains if invested the aforesaid amounts in the share market to wit till the final payment.

(b) to pay Rs.60,000/- as compensation for unfair trade practice under Section 2 (1) (c) (i). Deficiency of Service under Section 2 (1) (c) (ii), read with Section 2 (1) (g), spurious service under Section 2 (1) (OO) and Deceptive Service under Section 2 (1) (®) of the C.P. Act, 1986 and ibid, loss of profit/gains if the aforesaid amount invested in the share market for prolonged harassment, irreparable and inexplicable mental agony caused to the petitioner.

(c) To pay cost of litigation.”

4. The Opposite Party did not appear before the District Forum and the Complaint was partly allowed ex-parte, vide order dated 11.05.2012, with a direction to the Opposite Party to pay Rs.8,810/- to the Complainant, alongwith interest @ 9% p.a. from the date of institution of the case till realization.

5. Not satisfied with the order of the District Forum, the Complainant filed First Appeal No.463/2014 before the State Commission. The State Commission, vide order dated

08.02.2013, remanded the matter to the District Forum for deciding the Complaint afresh. In compliance of the order of the State Commission, the District Forum, vide order dated 28.01.2014, dismissed the Complaint as barred by limitation.

6. Aggrieved by the order of the District Forum, the Complainant filed First Appeal No.463/2014 before the State Commission. The State Commission, vide order dated 19.07.2016, dismissed the Appeal as not maintainable since the transactions involved in the case were commercial in nature.

7. The Complainant, thus, filed the instant Revision Petition with the following prayer: -

“1. Order to the Respondents/OPs to refund Rs.8810/- (Rs.6850/- and Rs.1960), the excess amounts paid by the complainant for purchase of 2000 shares of Arvind Remedies Ltd. and 200 shares of Reliance Power Ltd. respectively.

2. Order to the Respondents/OPs to refund Rs.27480/-, the difference of market value of 200 equity shares of Reliance Power Ltd. (Cost Rs.47440/- as per Bill No.16 dated 06/06/2008 and market value Rs.19960/- as on 04/02/2009 at the rate of Rs.99.80 per share as per NSE Web Page which was taken on 17/06/2009 by the Respondents/OPs and returned on 04/02/2009 after 232 days.

3. Order to the Respondents/OPs to pay financial loss of the appellant/complainant for enjoying huge financial benefit using the cash money and share of Reliance Power Ltd. as a Security Deposit by the OPs/respondents in Intra Day/daily trading in share market as shown in BSE web page under column (% change) in each day during the 232 days, admitted in answer Sl. No.18 against questionnaire of the Appellant/complainant Sl. No.18 as mentioned in para A-5 page No.46 of Appeal Petition of the State Commission.

5. Order to the Respondents/OPs to pay loss of earnings at the rate of Rs.10,000/- per day for ‘Casual visit’ prescribed by the Institute of Cost Accounts of India, at its Council Meeting, under Cost and Works Accountant Act, 1959 for each appearance from the date of Complaint Case on 08/03/2011 before the Ld. District Forum, Ld. State Commission and Rs.100000/- per appearance before the Ld. National Commission including the day of journey and stay there on due to nature of the case, for long period of trial of this case considering the rulings of the Hon’ble Supreme Court in the case of **Charan Singh v. Heading Touch Hospital (2000) 7 SCC 668**.

6. Order to pay Punitive Damages and exemplary compensation as provided by the Hon’ble Supreme Court in the case of **Charan Singh v. Heading Touch Hospital (2000) 7 SCC 668**.

7. Order to the Respondents/OPs to pay interest at the rate of 14% from the date of amount refundable till the date of recovery considering the rulings of the Hon’ble Supreme Court in the case of **United India Insurance v. Ajmer Singh (1999) SCC 400** and **Savintrog (India) Ltd. v. SBI (1999) 6 SCC 406**.

8. Order to the OPs to pay higher litigation cost including the cost of journey, cost staying & other incidental to the case.

9. Pass such other order(s) as Your Honour will deem fit and proper for the ends of justice and equity.”

8. Heard the Learned Counsel for the Petitioner and Mr. Kanhaiya Lal Rathi, Respondent No.3 in person, who is also the Authorised Representative for Respondents Nos.1 & 2 and carefully perused the record. Learned Counsel for the Petitioner submitted that the State Commission erred in holding that the Complainant was not a Consumer. He submitted that there is no provision in the Consumer Protection Act, 1986 that the person making investment in shares shall not be a Consumer. It was also submitted that the word "business" has been defined under Section 2 (13) of the Income Tax Act, 1961 which includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The term "share" is defined as assets/capital assets under section 2 (2) of the Income Tax Act like land, building, jewellery and other movable and immovable property held by common people. The State Commission failed to appreciate the aforesaid facts. The impugned order be set aside and the Revision Petition allowed.

9. Respondent No.3 submitted that since the case relates to purchase of shares, which is commercial in nature, the Complaint before the Consumer Forum was not maintainable and the Petitioner/Complainant is not a Consumer as defined under section 2 (1) (d) of the Consumer Protection Act, 1986. The Complainant invested the money in share market for the purpose of earning profit. The State Commission appreciated the facts in correct perspective and dismissed the Complaint as not maintainable. The Revision Petition is liable to be dismissed.

10. Facts of the case are that the Complainant purchased 2000 equity shares of Aravinda Remedies and 200 equity shares of Reliance Power Ltd. by making payment of Rs.13,700/- and Rs.49,400/- respectively. The Opposite Party delivered 1000 shares of Aravinda Remedies instead of 2000 shares amounting to Rs.6,850/- leaving a refundable amount of Rs.6,850/-. Further, the Opposite Party delivered 200 shares of Reliance Power Ltd. amounting to Rs.47,440/- leaving a refundable amount of Rs.1,960/-. When the Complainant enquired about his Demat Account, he came to know that 200 shares of Reliance Power Ltd. were transferred to the account of Ureka Stock & Share Broking Services without intimation to the Complainant. The Opposite Party also did not make payment of Rs.27,480/- being the differential price of the shares which were returned to the Demat account of the Complainant.

11. The District Forum dismissed the Complaint on the ground of limitation holding that cause of action arose on 02.06.2008 and the Complaint was filed on 08.03.2011, after expiry of more than two years. In para-9 of the Complaint, it is stated that the Complainant rushed to the Opposite Party and opposed their act as also reminded them of the dire consequences of their offence. Thereafter, on 04.02.2009, the Opposite Party transferred the shares of Reliance Power to the Petitioner's Demat Account. From this, it is clear that upto 04.02.2009, the cause of action was continuing one. Reading of para-15 of the Complaint shows that on 03.03.2009, 25.03.2009, 05.05.2009, 25.08.2009, 06.10.2009, 15.12.2009, 12.02.2010, 12.05.2010, 26.09.2010, 03.11.2010 and 03.12.2010, the Complainant sent letters to the Opposite Party seeking refund of the excess amount. From para-15 of the Complaint it is clear that the Complainant did not sit idle on the matter but continued writing letters to the Opposite Party. Even if we assume that the cause of action

arose 04.02.2009, as observed by the District Forum, the Complaint filed on 08.03.2011 was delayed by 33 days only, for which the Complainant had given satisfactory explanation in para-15 of the Complaint. Dismissal of the Complaint by the District Forum on the ground of limitation was not justified.

12. On the question of maintainability, the State Commission dismissed the Complaint with the observation that the Complainant was not a “Consumer” as he was dealing in share market. Definition of Consumer under section 2 (1) (d) of the Consumer Protection Act, 1986, reads as follows: –

“d) “consumer” means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who ‘hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes ;

Explanation .- For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment”

12. Reading of the above makes it clear that a consumer is a person who buys goods or hires or avails of services for a consideration. The section, however, carves out an exception by providing that the person who purchases goods or hires/avails services for commercial purpose, shall not be included in the definition of Consumer. Explanation to Section 2 (1) (d), however, provides that if such services are availed exclusively for earning livelihood, he will be considered as a “Consumer.” It is not the case of the Complainant that he had invested the money in share market exclusively for earning his livelihood. In this regard the State Commission observed as follows: –

“The above facts and circumstances clearly indicate that the transactions involved in the case on hand are commercial activities and such commercial activities are not exclusively for the purpose of self-employment of the Appellant/Complainant and thus the Appellant/Complainant is not covered by inclusive explanation appended to section 2 (1) (d) of the Consumer Protection Act, 1986 and hence, the Appellant/Complainant does not fall within the definition of “Consumer” as defined under section 2 (1) (d) of the Consumer Protection Act, 1986.”

13. The State Commission relied on the judgment of this Commission in ***M/s Steel City Securities Ltd. v. G.P. Ramesh & Anr. Revision Petition No.3060 of 2011 dated 03.2.2014*** and dismissed the Complaint with the observation that the transaction was commercial in nature and the Complainant was not a “Consumer.” Hon’ble Supreme Court in ***Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 224*** held as follows: -

“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 36-A 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. Q. 2: Whether the appellant company trades in shares?”

14. Law laid down by Hon’ble Supreme Court in Morgan Stanley Mutual Fund (supra) still holds good. Petitioner has not produced any case law contrary to the above. In view of the aforesaid discussion and the law laid down by the Hon’ble Supreme Court, I find that the Complainant is not a Consumer. The State Commission has passed a well-reasoned order. The Petitioner failed to point any illegality or material irregularity in the impugned order, warranting interference in the revisional jurisdiction. Revision Petition is dismissed. There will be no order as to costs.