STATE BANK OF INDIA V. NUR HOSSAIN

1. STATE BANK OF INDIA
ALUGRAM BRANCH P.O. ALUGRAM P.S. BHARATPUR,
DISTRICT-MURSHIDABAD
WEST BENGAL-742301

……..Petitioner(s)

Versus

1. NUR HOSSAIN
S/O. LT. KAYAM HOSSAIN, VILLAGE SUNIA, P.O. SEHALAI
P.S. BHARATPUR,
DISTRICT-MURSHIDABAD-742301
WEST BENGAL

……..Respondent(s)

Case No: REVISION PETITION NO. 1746 OF 2018

Date of Judgement: 12 Jan 2023

Judges:

HON’BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT
HON’BLE DR. S.M. KANTIKAR,MEMBER

For the Petitioner : For the Petitioner : Ms. Deblina Lahiri, Advocate
For the Respondent : For the Respondent : Mr. Amitava Bhattacharyya, Advocate

Facts:

Respondent obtained loan under PMEGP from petitioner bank for business. Sanctioned loan was Rs. 5 lakhs including Rs. 1.75 lakhs subsidy. Petitioner disbursed only Rs. 1.5 lakhs as first installment and did not release balance

amount. Respondent filed complaint before District Commission alleging deficiency in service for non-disbursal of full sanctioned loan.

Court's Opinions:

District Commission and State Commission concurrently held that bank failed to prove Rs. 1.5 Lakhs was only for machinery purchase as per scheme norms. No such stipulation in documents. Complainant was at liberty to utilize disbursed amount as per choice to establish unit under PMEGP. No evidence to show bank would disburse excess funds only for machinery purchase against loan conditions. State Commission had considered all evidence on record. No jurisdictional error in state commission order to warrant interference.

Arguments:

Petitioner:

Complainant diverted funds meant for machinery purchase so further disbursal stopped. Release of subsidy conditional upon project completion. Seeks setting aside state commission order.

Respondent:

Utilized disbursed amount as per sanctioned scheme only. Petitioner failed to prove funds were earmarked for machinery purchase alone.

Orders and Directions:

Revision petition dismissed.

If any amount deposited by bank per earlier conditional stay order, same to be released to respondent by District Commission along with interest.

Sections and Cases Referred/Cited:

Revisional jurisdiction under Section 21(b) of Consumer Protection Act, 1986

Sunil Kumar Maity Vs State Bank of India (SC 2022)

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Full Text of Judgment:

1. Challenge in this Revision Petition by the Petitioner Bank/Opposite Party in the Complaint, is to the order dated 14.3.2018, passed by the State Consumer Disputes Redressal Commission, West Bengal, Kolkata (for short "the State Commission") in First Appeal No. A/4/2017. By the Impugned Order, the State Commission while upholding the finding of the District Consumer Disputes Redressal Forum, Murshidabad at Behrampore (for short "the District Forum") on merits of the case, has modified its Order dated 04.01.2016 to the extent that the Petitioner shall pay a compensation of ₹2,00,000/- to the Complainant in lieu of depositing fine @ ₹50/- per day with the Consumer Legal Aid Account.
2. Facts, giving rise to the filing of the Complaint, are that the Complainant/ Respondent herein obtained a loan under Prime Minister's Employment Generation Programme (for short, "the PMEGP") from the Petitioner Bank for Mustered Oil and Spices which was subsequently revised to Spices and Atta Chhakki. According to him, the loan amount sanctioned was ₹5,00,000/- and subsidy was ₹1,75,000/- . However, the Petitioner Bank disbursed only a sum of ₹1,50,000/- to the Complainant, which was not helpful to him to start his business or to implement the scheme. The Complainant requested the Petitioner Bank for release of the balance amount but in vein. Alleging deficiency in service on the part of the Petitioner Bank, Complaint was filed before the District Forum for a direction to the Petitioner Bank to release the balance amount of the sanctioned loan and to pay compensation of ₹5.00 lakh for harassment and mental agony.
3. Upon notice, the Petitioner Bank contested the Complaint by filing its Written Version, whereby all the allegations made in the Complaint were denied. It was further stated that the Complainant was not a 'Consumer' as he applied for loan for Commercial Purpose to start his business and not to earn the

livelihood by way of self- employment; Complainant applied for a term loan of ₹3.00 lakh and working capital by way of Cash Credit of ₹1.75 lakh; Complainant has arranged the land and building shed from his own contribution on the basis of Lease Agreement dated 26.03.2011; the amount of ₹1,50,000/- was disbursed to the Complainant for purchase of plant and machinery and other fixed assets, however, the Complainant had violated the banking norms by diverting the said amount and did not purchase the plant and machinery; the Project was under Government Scheme and as per norms, a sum of ₹1,75,000/- was to be disbursed as subsidy to the Complainant by the Petitioner Bank after successful completion of the Project; since the Project was not completed, the amount of subsidy was not released to the Complainant.

04. On appraisal of the material available on record and the evidence adduced by the parties before it, the District Forum came to the conclusion that there was deficiency in service on the part of the Petitioner Bank in not disbursing the balance amount of the sanctioned loan to the Complainant on the ground that the amount of ₹1,50,000/- released to him as Ist Phase installment of loan, was not utilized for purchasing of plant and machinery as per the norms of the PMEGP". Accordingly, the District Forum, while allowing the Complaint, has directed the Petitioner Bank to release the balance amount of sanctioned loan to the Complainant within a period of 60 days from date of its order failing which the Petitioner Bank was liable to deposit a sum of ₹50/- per day as find with the Consumer Legal Aid Account for the delay. The District Forum observed as under:-

" Perused the record, we observed that the complainant has a sanctioned loan for mustered oil and spices later which was changed a Spices & Atta Chaki form the Directorate of Micro and Small Scale Enterprises, DIC, Murshidabad through the OP with a sum of ₹5,00,000/- is admitted fact. The loan amount sanctioned was a sum of ₹5,00,000/- and subsidy was of ₹1,75,000/- But the OP Bank disbursed ₹1,50,000/- to the complainant as 1st phase installment and stopped to disburse a

penny with a plea that the complainant break the norms of the Bank by expending the said amount for arrangement of shed and godown instead of purchasing machinery whereas record shows that the complaint complied as per his scheme where the same amount was for arrangement of shed and godown which was evident by the copy of the sanctioned scheme alongwith agreement of space for godown. Those documents proved that the plea of the OP is not true that the complainant has own land/shed alongwith godown. The OP did not disburse the rest amount on the basis of his own assumption which is very much whimsical and deficiency in service on his part.

Scrutinizing the documents in the record, we learnt that the Govt. Department sanctioned a sum of ₹ 1,75,000/- as subsidy to the complainant, whereas the OP mentioned that same amount was working capital.
It is very important to mention that the subsidy amount of a Govt. Scheme means the amount for the betterment of the scheme without any question of return to the giver whereas the OP mentioned that amount is a working capital. But yet the OP did not disburse that amount of ₹1,75,000/- to the complainant as it is as working capital is very much necessary to implement the scheme. On the other hand, the scheme was approved by the Govt. Department informed everything to the OP, so the OP cannot violate the procedure of implementation of the scheme. The OP should give emphasis to implement this type of scheme, which is a support scheme of the National Development Scheme has taken by the Government. This act of the OP is an example of deficiency in service and gross negligence on his part.
5. Aggrieved by the Order of the District Forum, the Petitioner preferred Appeal before the State Commission. The State Commission, after re-appreciation of the facts before it, affirmed the finding returned by the District Forum and modified its order as stated above. It was observed as under:-
“ It is a fact that according to the photocopy of lease document, the lessor confirmed receipt of Rs.1,50,000/- on 26.03.2011; whereas, the 1st instalment was released by the

Appellant on 30.03.2011. However, that cannot be a cogent ground to disbelieve the contention of the Respondent at its face value. The possibility of making temporary arrangement of money by the Respondent from his own source and thereafter repay the same on receipt of due finance from the Bank cannot be ruled out as a mere conjecture and surmises.
Whatever be the case, fact remains that in terms of the approved scheme, the Respondent was at liberty to utilize Rs.1,50,000/- for the purpose of arranging godown, shed etc. and that is exactly what he did. That Bank had no right to call in question the sincerity of purpose of the Respondent for doing so. Given that the Respondent did not deviate from the approved scheme in any manner whatsoever, it was indeed unfair on the part of the Appellant to find fault and level charges of diversion of fund against the Respondent.

It is also noteworthy that while the Bank was required to finance 60 to 75% of the total Project cost after deducint 15-35% or margin money (subsidy), the Appellant only released 32% (approx.) of the Project cost in favour of the Respondent. In doing so, the appellant not only contravened the provisions of PMEGP, in the process, blatantly violated the terms and condition of the Letter of Arrangement formulated by it.
In accordance with the guidelines laid down under the PMEGP, it was incumbent upon the Appellant to release the term loan amount within 3 months of sanction of the concerned Scheme, but it did not so.
As a result of all these arbitrary act of the Appellant, the entire project came to a standstill. In our considered opinion, therefore, the appellant cannot evade its liability for non-implementation of the intended project.
Although the Appellant raised strong objection to the release the subsidy amount citing relevant clause of the PMEGP, since the Appellant is fully responsible for the entire imbroglio, in our considered opinion, in that case, it would have to swallow the bitter pill and duly compensate the loss to the Respondent in this regard.”

6. Hence, the present Revision Petition by the Petitioner Bank.
7. We have heard the learned counsel for the parties at some length.
8. The brief facts of the case are that the Complainant, Nur Hussain applied for a loan of ₹5,00,000/- to the Petitioner Bank under the Prime Minister's Employment Generation Programme for establishing a Unit of Spices and Atta Chhakki. Under the said PMEGP, he was also entitled for a subsidy of ₹1,75,000/. The Petitioner Bank sanctioned him the total loan amount of ₹4,75,000/- out of which ₹3,00,000/- has been for Term Loan for Capital Expenditure and ₹1,75,000/- has been for Working Capital. However, the Petitioner Bank disbursed only a sum of ₹1,50,000/- to the Complainant as first phase of the Term Loan of ₹4,75,000/-. The balance amount of the sanctioned loan was not released to the Complainant by the Petitioner Bank on the ground that amount of ₹1,50,000/- was disbursed to the Complainant for the purpose of purchasing plant and machinery under the banking norms and conditions of PMEGP and since the said amount was not utilized by the Complainant for purchase of plant and machinery, the Petitioner Bank stopped releasing the balance amount of loan to him.
09. Having carefully gone through the Impugned Orders passed by the Fora Below as well as the material available before us on record, we are of the considered view that the Petitioner Bank has completely failed in discharging its duty to substantiate by way of adducing the cogent and documentary evidence that the Complainant was under an obligation in terms of the PMEGP and Bank's norm to specifically spent the amount of ₹1,50,000/- for purchasing plant and machinery only. On perusal of the Letter of Arrangement executed between the parties and the Agreement of Loan-Cum-Hypothecation dated 29.03.2011, we do not find any such stipulation requiring the Complainant to spend the amount of ₹1,50,000/- for purchase of plant and machinery.
It has been rightly observed by the State Commission that according to the approved Project, the Complainant was

required to incur an expenditure of ₹77,480/- towards procuring plant and machinery. If the first instalment of the sanctioned loan was to be disbursed for purchasing plant and machinery only, it cannot be safety presumed that the Petitioner Bank would release excess amount for purchase of the Plant and Machinery against the terms and conditions of the loan and PMEGP. There is a concurrent finding of facts returned by the Fora Below after due consideration of the record available before them that the Petitioner Bank has completely failed to lead any acceptable evidence to prove that the amount of ₹1,50,000/- was disbursed to the Complainant for purchasing the plant and machinery only. We fully agree with the conclusion arrived at by the Fora Below that the Complainant was at liberty to spend the said amount as per his choice to establish the approved Unit under the PMEGP. Moreover, when the Complainant was entitled for a subsidy of ₹1,75,000/- under the PMEGP, it cannot be expected from him that he would spend the amount disbursed to him out of the sanctioned loan in violation of Bank's norm and guidelines of the PMEGP. In our considered view, while passing the Impugned

Order dated 14.03.2018, the State Commission had considered all the material evidence on record and there is no illegality, material irregularity or jurisdictional error in the Order passed by the State Commission. It is well settled by the Hon'ble Supreme Court in 'Sunil Kumar Maity vs. State Bank of India &Anr.' [Civil Appeal No. 432 / 2022 Order dated 21.01.2022] that the Revisional Jurisdiction of this Commission under Section 21(b) of the Consumer Protection Act, 1986 is extremely limited and this Commission cannot set aside the Order passed by the State Commission in Revisional Jurisdiction until and unless there is any illegality, material irregularity or jurisdictional error in the Order passed by the State Commission. For ready reference, relevant paragraph of the judgement is reproduced as under:-

" It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is

extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. …..”

10. For the reasons stated hereinabove, we do not find any good ground to interfere with the well-reasoned Impugned Order dated 14.03.2018 passed by the State Commission which is based on proper and correct appreciation of the facts and evidence adduced by the Parties. Consequently, the present Revision Petition fails and is hereby dismissed. However, keeping in view the peculiar facts of the case, there shall be no Order as to costs.

11. Vide Order, dated 09.07.2018, while granting the stay of the impugned Order dated 14.03.2018, this Commission has directed the Petitioner Bank to deposit the entire decretal amount along with upto date interest with the District Forum as pre-condition of Stay. If any amount is deposited with the District Forum in compliance with the Order dated 09.07.2018, we direct the District Forum to release the said amount alongwith accrued interest in favour of the Complainant.