

ISSN: 2278-9529

GALAXY

International Multidisciplinary Research Journal

September 2016 – Vol. 5, Issue– 5

Editor-In-Chief: Dr. Vishwanath Bite

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Consumer Protection in Banking Sector

Rakesh Kumar

Asst. Professor,
P.G. Department of Commerce,
S.G.G.S. Khalsa College, Mahilpur

The consumer protection Act, 1986 applies to all goods and services in India. The provisions of the act are compensatory in nature. Banking sector also provides many services to the people. In the present era, sometimes disputes arise regarding services provided by the banks. So it is necessary to sort out disputes regarding services under this act. The paper highlights some case studies under the various courts of India under this act regarding banking services disputes.

Keyword: Banking, Consumer, Protection, Grievances

Introduction

The Consumer Protection Act, 1986, is one of the examples that is to be treated as a milestone in the history of socio-economic legislation to protect the interests of the consumers in India. The main objective of the Consumer Protection Act is to ensure the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is also intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, and relief of a specific nature and award of compensation wherever appropriate to the consumer. The act has been amended in 1993 both to extend its coverage and scope and to enhance the powers of the redressal machinery.

The main features of this act as given below:

- The Act applies to all goods and services unless specifically exempted by the Central Government.
- It covers all the sectors whether private, public or cooperative.
- The provisions of the Act are compensatory in nature.
- It enshrines the following rights of consumers.
- Right to be protected against the marketing of goods and services which are hazardous to life and property of the people.
- Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices.
- Right to be assured, wherever possible, access to a variety of goods and services at competitive prices.
- Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums.
- Right to seek redressal against unfair trade practices unscrupulous exploitation of consumers and
- Right to consumer education.

According to this act following three-tier system has been provided under the Act to deal with consumer complaints;

a) District Forum- It operates at the district level and deals with consumer complaints pertaining to the value of goods or services and compensation not exceeding Rs. 20 lac.

b) State Commission- It operates at the state level and deals with complaints of the value exceeding Rs. 20 lac but not exceeding Rs. 100 lac. It also hears appeals against the orders of the District Forum.

c) National Commission- It functions at the national level for the complaints of the value exceeding Rs. 100 lac and hears appeals against the orders of the State Commission. Complaints in relation to any goods or services may be preferred before the above mentioned forum by the consumer himself or by any recognized consumer association where the consumer is a member or where there are a number of consumers having the same interest, one or more consumers on behalf or for the benefit of all the consumers so interested. Complaints may also be preferred by the Central or the State Government.

As per section 2(1) (c), of the Act, following may form the subject- matter of complaint-

1. An unfair trade practice or a restrictive trade practice adopted by any trader
2. Defect in the goods purchased
3. Deficiency in service
4. Over-charging of price

Some important definitions under this act are given below to clarify the concept of consumer protection:

1) Service: The term Service [Section 2(1)(o)] has been defined in the Act to mean service of any description and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy etc. but does not include the rendering of any service free of charge or under a contract of personal service.

2) Deficiency: The term deficiency [section 2(1) (g)], means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained under any law or in pursuance of a contract or otherwise.

3) Consumer: The term consumer section 2(1)(d) of the Act, A consumer is a person belonging to the following category – a) One who buys the goods for a consideration which has been paid or promised or partly paid and partly promised under any system of deferred payment. b) One who hires or avails of any service or services including any beneficiary thereof or a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment c) It includes a user or beneficiary of goods or services other than the person who actually buys goods or hires/avails services where such use is made with the approval of purchase or hire.

4) Consumer Dispute: The term consumer dispute has been defined under section 2(c) of the act to mean a dispute where the person against whom a complaint has been made denied or dispute

the allegation contained in the complaint. The allegation referred may pertain to defect in goods, deficiency in service, overcharging, sale of hazardous goods, adoption of unfair trade and practices or restrictive trade practices.

Introduction to Banking

Banking Regulation Act, 1949 define banking, “the accepting for the purpose of lending and investment of deposits of money from the public, repayable on demand or otherwise, and withdraw able by cheque, draft or otherwise.” Banking in the present economic set up has become an important part of economic life of every individual and concern. Banks encourage savings, a part of which goes to banks in form of deposits. The resources created by banks find their way in the form of lending and investment which are directly encouraging economic activities throughout the nation.

In banking transactions, a customer of a bank who has a bank account with the bank or a person who purchases a bank draft, hires locker facility or obtains bank guarantee from a bank. He can claim under the Act for “deficiency in service” on the part of the bank or for “restrictive trade practice” or “unfair trade practice” adopted by the bank.

Case Studies regarding Applicability of Consumer Protection law in the Banking Sector

Banking sector also witnessed so many disputes with their customers regarding different services provided by them. Consumer Protection Act plays important role to protect the customers from unfair practices adopted by banks. Some of the cases regarding various issues of banks are highlighted below:

Withdrawal Dispute:-When the complainant sought transfer of his account to another place, he was made to sign on different papers including withdrawal slip. An amount of Rs.40, 000/- was withdrawn from the account. The District Forum dismissed the complaint on the ground that allegations of fraud leveled cannot be gone into in summary proceedings and hence this appeal. It was observed that the complaint can be disposed of if finding was recorded that Bank was deficient in rendering service and the complainant was put to loss due to the negligence of the bank. The order of District Forum was set aside and compensation was awarded. Sanjay Chopra v. Manager, Punjab National Bank & Ors. 1998 (1) CPR 358 (SCDRC - Punjab)

Dispute regarding Cheques sent for collection:- When cheques given by the complainant to the bank for collection were lost due to negligence of the employees of the bank it was held that such account holder cannot be made to suffer. It was held that a person holding a savings bank a/c with a bank would fall within the definition of consumer under the Consumer Protection Act and the difference in the interest paid to the account holder and the interest earned by the bank by

lending his amount is the consideration for the service of the bank. Branch Manager, Canara Bank Vs. K.R. Hanumatha Rao - 1992(1) CPR 401 (SCRDC – Kar)

Dishonour of cheque without reasonable ground:- A Cheque being dishonoured by Punjab & Sind Bank despite sufficient funds in the account of the customer on the ground that dealing official being an old man misread the figures of amount outstanding in the account is a deficiency in service. The District Forum had awarded Rs.5000/- as compensation and Rs.1000/- as costs and the State Commission concurred with the observation of the District Forum. Punjab & Sind Bank Vs. Manpreet Singh Sood 1994(2) CPR 627 (SCDRC,Punjab)

Fixed Deposit:- The complaint was filed for deficiency in banking service for withholding of amount even after date of maturity of a term deposit. It was held that withholding of amount even after date of maturity is deficiency in service and the complainant was entitled to get the maturity amount with interest at 15% from date of its maturity till payment. Sumangal Rao & another vs. Vijaya Bank, CPR(1) 163 (SCDRC - Karnataka)

Shares:- The complainant's case in the lower forum was that he had given a power of attorney in favour of the State Bank of India for transferring share on his behalf and that in pursuance of the said power it had acted malafide causing loss to the complainant and creating a bad debt against the complainant. The District Forum dismissed the complaint on the ground that the service of selling the shares to others hired by the complaint was not a banking service and that it was a service under personal contract. The State Commission held that if selling of shares or purchasing the same out of account maintained by customer is undertaken by bank then it is service and complaint about deficiency in such service is maintainable. Appeal allowed. T.K.Goswami Vs. State Bank of India, CPR1995(1)No.559 (SCDRC - West Bengal)

Interest charged:- The complaint was filed under section 2(1) and 14 for deficiency in service for charging of interest at higher rate contrary to stipulation of loan the opposite party bank. It was held that the charging of the interest by a bank contrary to the stipulation of loan is deficiency in banking service and the Complainant was entitled to get Rs.5 lakhs as compensation. Complaint allowed. Narayan Rao Mahadeo Manjrekar Vs.Sangli Bank Ltd.& another, CPR1995 (1) 582 (SCDRC - Maharashtra)

Lien:- Where even after discharging the loan for which jewels were pledged, the bank did not return the jewels on the ground that the complainants earlier loan is still due, it was held that bank is entitled to retain the jewels as a lien under Section 171 of the Indian Contract Act. The Branch Manager, Canara Bank Vs. P.Moovendan - 1992(2) CPR 455 (SCRDC – Mad) .

Complaint was filed under section 2 and 14 of Consumer Protection Act for deficiency in banking service. The complainants availed loan facility by pledging their gold ornaments. Despite the repayment of loan, bank refused to release ornaments. It was held that bank's conduct is arbitrary and illegal and it is liable to be directed to release ornaments to complainant or its

market price with 18% interest Appeal allowed. Bhaskar Ramakrishna, Vasco Vs. Manager, Goa Urban Co-op. Bank Ltd. CPR(1) 6(SCDRC - Goa)

Loans and Advances:- No relief can be sought under the Consumer Protection Act against a Bank where Bank failed to advance further amount or discontinued the overdraft or cash credit facility. Mukesh Jain Vs. V.K. Gupta & another 1991(1) CPR 364 (NC).

Locker Rent: - Increase in rent of locker from Rs. 75/- to Rs. 200/- per annum without any improvement in banking service, was held to be deficiency in rendering of service (as per the majority of the members of the Commission) and directions were issued to the bank to charge the earlier rent of Rs. 75/- per annum and the bank was allowed to increase the rent up to the same level as other nationalized banks. The President of the Commission dissented for the reason that although the complainant is a consumer within the definition of the section 2(1)(d) of the Consumer Protection Act, 1986 and the service rendered by the bank is service as defined under section 2(1)(o) of the Act, however the Consumer Forum are not appropriate authorities to fix such rents. P.D. Dalmia v. Branch Manager, Vijaya Bank 1997 (1) CPR 415 (SCDRC-WB)

Bank Guarantee: - A complaint was filed alleging deficiency in service in not paying the amount of bank guarantee on demand. The defense plea was that the demand was not in accordance with terms of guarantee. It was held that where bank guarantee provided conditions for its invocation then Bank would not be deficient in service in not making payment under the bank guarantee if conditions were found not fulfilled. M.P. Minerals Ltd Vs. Bank of India & ors - 2003 (1) CPR 96 (NC)

Delay in Service: The bank is liable for deficiency in service for inordinate delays in providing banking services and the customer of the bank is entitled to claim compensation for the loss and the injury suffered by him due to the inordinate delay in the payment of the amount of deposit certificate on its premature encashment. P.N. Prasad Vs. Union Bank of India 1991(1) CPR 198 (SCDRC- AP, Hyderabad)

Wrongful Dishonour of Demand Draft: Due to the wrongful dishonour of the demand draft the complainant was stranded at a very far off place from his home and it resulted in loss, mental agony and hardship to him. The primary duty of a Bank is to safeguard and protect the interest of their customer. It was held that if there has been a lapse or an omission committed by the officials of the Bank and if some inconvenience were caused to a customer due to the omission, negligence or default of the Bank, it amounts to a defective service according to the Consumer Protection Act. N. Raveendran Vs. Branch Manager, State Bank of India 1991(2) CPR 473 (SCDRC-Kerala)

Conclusion

Analysis of the various judgments of the Consumer Courts indicates that banks have not only been awarding the value of the goods or services for the defect and deficiency in service but also

the compensation for the mental harassment. Under this act justice seems to have prevailed. It has been found that there is a positive justice to the consumers against the faulty banking services.

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