Stephen Kaniampuram and Another Vs. P.V. Chacko and Another

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Nov-30-2010

Judge : The Honourable Shri. Justice K.R. Udayabhanu President &Amp; the Honourable Shri. S. Chandramohan Nair Member

Appeal No. : First Appeal No. A/10/248 (Arisen out of Order Dated 19/02/2010 in Case No. CC 377/08 of District & & A.356/2010

Appellant : Stephen Kaniampuram and Another

Respondent : P.V. Chacko and Another

Judgement :

JUSTICE SHRI.K.R. UDAYABHANU : PRESIDENT

The appellant in A.248/10 is the complainant and the appellant in A.356/10 is the opposite party in CC.377/08 in the file of CDRF, Ernakulam. Opposite party/appellant in A.356/10 is under orders to pay to the complainant double the respective amounts deposited vide receipts 93939 (Ext.A1) and receipt 102031 (A2) with interest at 6% per annum from one year from the date of deposit till realization and also to pay cost of Rs.1000/-.

2. The complainant filed the complaint and conducted the case in person before the Forum as well as before this Commission.

3. The case of the complainant is that he had taken 2 family pack memberships in the scheme of the opposite parties ie for Rs.62,500/- dated:5/10/2005 and for Rs.70,000/- dated:18/10/2005. The family pack consisted of a combination of more than one unit of Rs.625/-. The assurance was that the opposite party will buy weekly lottery tickets worth Rs.10/- per unit for 35 weeks. The price money up to Rs.5000/- will be collected and then credited to each individual account. Price money of Rs.5000/- and above will be given to the respective members. It was also assured that the membership gets matured within one year and the amounts will be refunded + 100% advantage against lottery commission. On 10/5/2008 the Government instructed LIS not to enroll any new members. After a few weeks LIS stopped buying lottery tickets. As the complainant had no other income he closed his 3rd membership dated:16/2/2006 for Rs.9,10,000/- on 4/7/2006. As the amount was withdrawn before maturity the opposite party refunded only Rs.5,90,032/-. The complainant lost Rs.3,19,968/- in the above transaction. Maturity of the first 2 memberships were on the 5th and 18th of October 2006 respectively. Till now the amount has not been refunded despite letters sent. The opposite party had advertised in December 2005 in Malayala Manorama that even if no one takes new memberships, Liss will continue buying lottery tickets for existing members. When enquired about the fact of not purchasing lottery tickets the complainant was told that the Government had freezed the bank account. As on 31-1-2006 the Liss should have a minimum of Rs.80,58,00,000/- and odd amount as contribution balance from the membership units. The same is based on the advertisement in Malayala Manorama dated:9th February 2006. The complainant has sought for refund of the membership amount + 100% advantage against lottery commission + 12% interest from the date of maturity altogether amounting to Rs.3,27,450/- and also to refund the balance amount of the 3rd family pack membership dated:16/2/2006 amounting ie of Rs.9,10,000/- which would amount to Rs.3,19,968/-. He was also sought for Rs.64,740/- compensation for mental agony.

4. The opposite party has filed version contending that the complainant is a person who has substantially benefited from the scheme. The complainant has earned a profit of Rs.14,04,400/- against his deposit of Rs.7,60,000/-. The version contains the dates of deposits up to 14/3/2005 and the amounts deposited and the amounts

refunded after 7 months in 3 instances and 10 months on the last instance. The last payment to the complainant was on 11/2/2006. Thereafter again he entrusted Rs.9,10,000/- on 16/2/2006 retaining Rs.10,000/- with him. On 10/5/2006 at the instigation of certain private finance companies, the South Zone I.G. of Police raided the office of the opposite party and registered a suo motu case and directed to stop business. After 2 months the petitioner demanded the withdrawal of his last membership of Rs.9,10,000/-. As per the rules of the Forum, the membership amount can be refunded after deducting the cost of lottery tickets purchased and 25% from the balance as service charge. The lottery price secured and collected by him will also be paid to him. Accordingly he was refunded Rs.5,90,032/-. The complainant is seeking the return of the alleged balance amount after 2 years. Instead of his earlier withdrawal he has made a profit of Rs.1,06,497/-. The other 2 memberships of Rs.62,500/- and Rs.70,000/- was retained. On account of the prohibition made by the police, the business could not be conducted and the lottery tickets could not be purchased. It was in the above circumstances that the amount of the 2 memberships could not be refunded.

5. The evidence adduced consisted of the testimony of PW1, DW1, Exts.A1 to A14 and B1 to B3.

6. The Forum has rejected the case of the complainant with respect to the deposit of Rs.9,10,000/- as he had executed Ext.B1 request for premature withdrawal and as he has no case that he executed Ext.B1 under fraud, coercion or undue influence. The other deposits of Rs. 62,500/- and 70,000/- was ordered to be paid in total and with interest at 6% from the date of maturity.

7. The case of the appellant/complainant is that he is entitled for the balance amount with respect to the deposit of Rs.9,10,000/- and also interest at a higher rate with respect to the other 2 deposits and also compensation. It is the contention of the complainant that as per assurance of the opposite parties as evidenced from Ext.A4 brochure the deposits will mature and the deposit amounts will be refunded in total after one year or on 14 more members purchased the units after the date of purchase of the units/deposits by the petitioner. According to him, the opposite party has amassed crores of rupees by way of commission from

lottery tickets itself. As per the scheme, the deposit is divided as units of Rs.625/- with respect to 2 deposits and the units of Rs.1250/- with respect to the deposit of Rs.9,10,000/- Lottery tickets worth Rs.10/- per week will be purchased for each unit and with respect to the deposit of Rs.62,500/- 100 lottery tickets will be purchased in a week. This is the case with all the deposits/units. According to him even as per the advertisement lakhs and lakhs of members have purchased the units and at the time the commission for purchase of lottery ticket was 25%. The opposite parties have received considerable amounts from the commission of lottery tickets itself. According to the complainant the opposite party is still retaining lakhs and lakhs of amounts and now repaying the amounts as promised earlier. According to him all his deposits have matured on the joining of 14 members subsequent to the purchase of units by the complainant and the same has been suppressed by the opposite party.

8. We find that the finding of the Forum that Ext.B1 request was executed voluntarily and hence the complainant is not entitled for any amount with respect to deposit of Rs.9,10,000/- cannot be upheld in the circumstances. Evidently, the complainant had no other option as the institution of the opposite parties was raided by the police and the business closed. Evidently all the depositors were desperate to get whatever available. Evidently it was in such circumstances the complainant has executed Ext.B1 request. It has to be noted that the complainant has conducted the case in person and hence the technicalities of law was not known to him. In the circumstances we find that the finding of the Forum on the above part of the case is liable to be set aside.

9. The opposite parties deducted 25% of the balance amount as evident from Ext.A5 account status. As per Ext.A5 it can be seen that Rs.1,31,040/- was deducted towards lottery ticket cost. Of course the complainant was given the prizes won that amounted to Rs.22,277/-. It is after deducting the ticket cost a further deduction of 25% is made. The amount deducted works out to Rs.1,94,740/-. Service charges to such an extent for a deposit for a brief period of about 5 months are quite unreasonable. Further more no interest has also been paid on the amount of Rs.9,10,000/-. Of course the contention of the complainant that his deposit has matured has more than 14 persons have purchased units

subsequent to his purchase/deposit stands not proved as the complainant has filed to summon documents or produce evidence in this regard. Hence we find that with respect to the deposit of Rs.9,10,000/- is concerned the complainant is entitled for the balance amount of Rs.1,94,740/- with interest at 12% from the date of deposit ie 16/2/2006.

10. With respect to the deposit of Rs.62,500/- and Rs.70,000/-, the Forum has directed to pay the amount in double and interest at 6% from one year of the date of deposit till realization. We find that the above finding is quite reasonable. We hold that the complainant is also entitled for a compensation of Rs.10,000/-. The order as cost of Rs.1000/- is upheld. The appellant/complainant in A.248/10 would be entitled for a sum of Rs.5000/- towards cost in the appeal. The amounts are to be paid within two months from the date of receipt of this order failing which the complainant will be entitled for interest at 15% on the amounts due from 30/11/2010, the date of this order.

In the result A.248/10 is allowed in part and A.356/10 is dismissed.

Office will forward LCR along with the copy of this order to the Forum.