State Bank of India Vs. Devender Partap Singh

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Nov-09-2005

Judge : J.D. Kapoor, President &Amp; Mr. Mahesh Chandra, Member

Appeal No. : Appeal No. A-590 of 2005

Appellant : State Bank of India

Respondent : Devender Partap Singh

Judgement :

J.D. Kapoor, President:

1. On account of failure of the appellant in not maintaining proper functioning of ATM whereby the respondent was deprived of withdrawal of cash of Rs. 800 in spite of there being balance of Rs. 25,565.63p. in the Saving Bank of the respondent which was opened on 6.11.2003, the District Forum, vide impugned order dated 26.7.2005 has directed the appellant to pay Rs.4,000 as compensation and Rs.l,000 as cost of litigation.

2. The relevant facts lie in narrow compass and are as under:

That the respondent was maintaining SB account No.01190055787 which war opened on 6.11.2003. As on 2.2.2005, the balance of the respondent was Rs.25,565.53p. The respondent was enjoying ATM facility on this account. The respondent went to his native place i.e. Bulandshahar. He used the ATM card thrice to withdraw Rs.800 but the respondent could not withdraw money as the machine refused to make payment on account of insufficient, fund. Later on, the ATM informed the respondent that he has balance of Rs. 249.47. The respondent felt surprised on knowing that his balance is Rs. 249.47. The respondent contacted the Branch Manager of the appellant on 28.2.2005 who informed that his balance on 26.2.2005 was Rs. 25,565.63p.

3. Through this appeal, the impugned order has been mainly assailed on two grounds. Firstly that respondent is not a consumer of the appellant in respect of ATM transaction as appellant does not charge for ATM operations and therefore ATM service does not fall within the ambit of service as contemplated under Section 2(1)(g) of the Consumer Protection Act, 1986 as no consideration is charged from the consumer. Secondly, that Terms, and Conditions of ATM transaction provides for no liability in respect of any loss direct or indirect on account of failure of ATM or its malfunctioning. Relevant Clause of the terms and conditions are as under:

Please remember that an unauthorised person can access the ATM service on cardholders account if he gains the card and the PIN. The card, therefore, should remain in card holders possession and should not be handed over to anyone else. The card is issued on the condition that the Bank bears no liability for the unauthorised use of the card. This responsibility is fully that of the card holder. Further the Bank will not be responsible for any loss either direct or indirect on account of ATM failure/malfunctioning.

4. The contention of the appellant that the respondent was not a consumer is wholly devoid of merit as ATM facility was being provided to the consumer against the Saving Bank account which is always opened against consideration and charges. Section 2(1)((g) of the Consumer Protection Act,1986 defines service

Service means service of any description which is made avaliable to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loding or both (housing construction) entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. As is aparent service of banking which includes ATM service also comes within the ambit of service for the purpose of Consumer Protection Act, 1986 and every person who avails such a service is a consumer.

5. As regards contention that failure or malfunctioning of ATM exempt the appellant from any liability, relevant clause needs to be reproduced. It reads as under:

The ATM service is for withdrawing cash against the balance that is already available in your account. It is therefore the card holders obligation to maintain sufficient balance in the designated account to meet cash withdrawal and service charges. This clearly shows that operation of ATM is subject to payment of service charges.

6. As regards the above referred terms and conditions and the liability of the appellant in respect of ATM facility, these terms cannot come to the rescue of the appellant inasmuch as that it was neither the case of ATM failure nor that of malfunctioning. When the respondent went to ATM facility, the machine showed hardly Rs.249.41p. as balance whereas in actuality there was a balance of Rs. 25,585.53. This is a grossest kind of deficiency in service on the part of those, who are maintaining and feeding ATM machine. ATM does not on its own show the amount in the credit of a person. It is the officials who feed in it and therefore any shortcoming or imperfection in not projecting the correct figures comes within the ambit of deficiency in service as contemplated or envisaged under Section 2(1)(g) of the Act which means:

any fault, imperfection, short-coming or adequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any office.

7. In our view, compensation awarded by the District Forum is on the lower side but we do not feel inclined to interfere with the impugned order and dismiss the

appeal being devoid of merits.

8. FDR/Bank Guarantee if any, deposited by the appellant be returned to the appellant forthwith under proper receipt.

9. A copy of this order, as per the statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and, thereafter, the file be consigned to the Record Room.

Appeal dismissed.