

SANJAY SHANKARSA MAMARDE
(Civil Appeal No. 7189 of 2002)

B JULY 9, 2010

[D.K. JAIN AND H.L. DATTU, JJ.]

Consumer Protection Act, 1986 – ss 2(o), 2(g) and 23 –

C *Sanction of loan by State Financial Corporation to complainant – Non-disbursement of balance instalments by Corporation to complainant – Complaint alleging deficiency in service – Allowed by National Commission – Direction to Corporation to pay compensation to complainant –*

D *Correctness of – Held: Not correct – Non-release of loan amount was not because of any deficiency on the part of Corporation but due to complainant's conduct – Complainant failed to furnish progress report and did not discharge his liability towards interest despite repeated demands – Thus,*

E *failure of Corporation to render 'service' could not give rise to claim for recovery of any amount under the Act.*

The State Financial Corporation sanctioned loan to the complainant for his hotel project. The said loan of Rs. 30 lakhs was to be disbursed to the complainant in instalments on complainant's furnishing the progress report of the project at Amravati. The Corporation released the first instalment of the loan of Rs. 2,90,000/- to the complainant. However, the Corporation did not submit the progress report of the project and the other documents. The complainant also did not discharge his liability towards the interest despite repeated demands. The Corporation also came to know about the proposal for railway line between Amravati and Narkhed which was likely to affect the hotel project. As such the Corporation

stopped the disbursement of balance amount of loan to the complainant. The complainant filed a complaint before the National Consumer Disputes Redressal Commission against the Corporation alleging deficiency in service on the part of the Corporation on account of their failure to release the balance loan amount. The Commission allowed the complainant and directed the Corporation to pay to the complainant an amount of Rs. 4,84,457/- as compensation. Hence the appeal.

Allowing the appeal, the Court

HELD: 1.1 Clause (o) of section 2 of the Consumer Protection Act defines "service". The use of the words 'any' and 'potential' in the context these have been used in clause (o) indicates that the width of the clause is very wide and extends to any or all actual or potential users. The legislature has expanded the meaning of the word further by extending it to every such facilities as are available to a consumer in connection with banking, financing etc. Undoubtedly, when banks or financial institutions advance loans, they do render 'service' within the meaning of the clause. [Para 15] [368-G; 369-B-C]

1.2 It is manifest from the language employed in clause (g) of the section 2 defining deficiency that its scope is also very wide but no single decisive test in the determination of the extent of fault, imperfection, nature and manner of performance etc. required to be maintained can be laid down. It must depend on the facts of the particular case, having regard to the nature of the 'service' to be provided. [Para 16] [369-F]

1.3 In the instant case, the Corporation was obliged to disburse to the complainant a loan of Rs.30 lakhs in instalments on complainant's furnishing the progress report of the project. Although, no specific information

- A with regard to the actual dates for release of the instalments of the loan amount are forthcoming, yet it can be gathered from the correspondence on record that the loan amount was to be disbursed periodically (perhaps half yearly), on the basis of the report of the approved
- B valuer on the progress of the project. It is evident from Corporation's letters that the complainant not only failed to furnish the progress report, he also did not discharge his liability towards interest, as demanded from him from time to time. Even the cheque in the sum of Rs.30,000/-
- C issued by the complainant to the Corporation on 2nd September, 1992 towards up-front fee was returned unpaid by his bankers. In Corporation's letter dated 24th February, 1994 it was alleged that the complainant had not only failed to pay interest, it was also found on
- D inspection on couple of occasions by the Regional Manager that during the last four months there was no further progress in implementation of the project. It is significant that these allegations and details of interest due from the complainant had not been seriously
- E disputed by the complainant either before the Commission or in the counter affidavit filed by him in this appeal. In the background of the factual scenario as emerging from the material on record, there was no shortcoming or inadequacy in the service on the part of
- F the Corporation in performing its duty or discharging its obligations under the loan agreement. The Corporation was constrained not to release the balance instalments and recall the loan on account of stated defaults on the part of the complainant himself. Non release of loan amount was not because of any deficiency on the part
- G of the Corporation but due to complainant's conduct and therefore, the failure of the Corporation to render 'service' could not be held to give rise to claim for recovery of any amount under the Act. [Para 17] [370-A-H]

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1.4 Unless the action of a financial institution is found to be mala fide, even a wrong decision taken by it is not open to challenge, as the wisdom of a particular decision is normally to be left to the body authorized to decide. [Para 18] [371-B]

U.P. Financial Corporation and Ors. vs. Naini Oxygen and Acetylene Gas Ltd. and Anr. (1995) 2 SCC 754 – Relied on.

1.5 Having considered the matter in the light of the correspondence exchanged between the Corporation and the complainant, there can be no hesitation in holding that there has not been any deficiency in the service the Corporation was required to provide to the complainant. The Commission was not correct in coming to the said conclusion. The complainant being himself a defaulter right from inception of his dealing with the Corporation, when his cheque in the sum of Rs. 30,000/- got dishonoured, coupled with persistent defaults in discharging his liability to the Corporation towards interest, despite repeated demands, he cannot be permitted to plead at the later stage that he suffered on account of deficiency in service by the Corporation because of non-disbursement of balance instalments of loan by them. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness cannot be a one-way street. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment like in the instant case, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been followed. [Para 19] [371-G-H; 371-A-D]

Haryana Financial Corporation and Anr. vs. Jagdamba Oil Mills and Anr. (2002) 3 SCC 496 – Relied on.

A 1.6 The order passed by the Commission is set aside and the complaint filed by the complainant is dismissed. Amount deposited in terms of order dated 19th July, 2004 shall be released to the Corporation on maturity of the fixed deposit. [Para 20] [372-D-E]

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Case Law Reference:

(1995) 2 SCC 754 Relied on. Para 18

(2002) 3 SCC 496 Relied on. Para 19

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7189 of 2002.

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From the Judgment and Order dated 07.01.2002 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 9 of 1995.

Santosh Paul, Arvind Gupta and M.J. Paul for the Appellants.

Manish Pitale and Sunil Kumar Verma for the Respondent.

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The Judgment of the Court was delivered by

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D.K. JAIN, J. 1. Challenge in this appeal, filed under Section 23 of the Consumer Protection Act, 1986 (for short "the Act"), by the Maharashtra State Financial Corporation (hereinafter referred to as "the Corporation"), is to the final order, dated 7th January, 2002, passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the Commission") in Original Petition No. 9 of 1995. By the impugned order, the Commission has accepted the complaint preferred by the respondent (hereinafter referred to as "the complainant") against the Corporation and has directed the Corporation to pay to the complainant an amount of Rs.4,84,457/- as compensation, within a period of two months from the date of the order and in case of default, to pay interest

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at the rate of 18% per annum from the date of order till actual payment. A

2. Succinctly put, the material facts giving rise to the present appeal are as follows:

The complainant approached the Corporation for sanction of loan for his hotel project at Amravati. As per the project report, the capital outlay was of Rs.74.45 lakhs. The means of finance envisaged in the project report were as follows: B

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| i) Proprietor's capital | : Rs.16.80 lakhs | C |
| ii) Term loan from Corporation | : Rs.30.00 lakhs | |
| iii) Special Capital Incentive
from SICOM : | : Rs.21.30 lakhs | |
| iv) Unsecured loans | : Rs. 6.35 lakhs | D |
| Total | : Rs.74.45 lakhs | |

3. The Complainant's loan proposal was approved by the Executive Committee of the Corporation on 27th May, 1992, sanctioning a term loan of Rs.30 lakhs to the complainant. Accordingly, a sanction letter along with terms and conditions of the loan was issued to the complainant on 2nd July, 1992. The material conditions of loan were as follows: E

- "(a) The loan shall be utilised exclusively for the project as per the scheme approved by MSFC and the specific purposes for which the same is sanctioned. F
- (b) The loan shall be disbursed by MSFC in one lump sum or in instalments as and when the said purposes are fulfilled or at the entire discretion of the Corporation or may be refused if in the opinion of the Corporation, the purpose for which the full G
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- A loan has been sanctioned are not properly fulfilled.
- (c) The loan will be disbursed either for acquisition of fixed assets under the said scheme or for reimbursement of funds utilised for acquisition of fixed assets taken for security under the said scheme.
- B (d) A minimum margin of 55% over all on fixed assets shall be maintained during the currency of the loan.
- C (e) The loan shall be repaid within a period of 8 years by 13 half yearly instalments commencing from the end of 2nd year of disbursement of the first instalment of the loan. The amount of each instalment repayable being about 1/13 of the amount sanctioned regardless of the amount disbursed.
- D (f) The interest shall be charged @ 22% p.a. and the same shall be payable quarterly on the total loan and the same shall be charged from the date of disbursement of first instalment of the loan."
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Additionally, it was also agreed that the loan amount would be disbursed depending on the progress of the work in accordance with a set time schedule. The progress of the construction work was required to be evaluated by the valuer approved by the Corporation.

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4. The said conditions were accepted by the complainant. Pursuant to complainant's request vide his letter dated 2nd September, 1992, undertaking to bring entire 100% capital; filing his banker's confirmation for grant of bridge loan against subsidy i.e. (SCI) and loan sanction letter from MSEB, before availing of the next disbursement, the first instalment of the loan of Rs.2,90,000/- was released by the Corporation to the complainant. On the same day, the complainant issued a cheque in the sum of Rs.30,000/- towards up-front fees to the

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Corporation. However, the said cheque of Rs.30,000/- was dishonoured when presented for payment. By their letter dated 5th December, 1992, the Corporation intimated the complainant that despite the release of first instalment of Rs.2.90 lakhs, he had neither submitted papers for further disbursements nor reported progress of the project and had also failed to submit Chartered Accountant's certificate showing his investment. Subsequently, a valuation report dated 7th January 1993, showing that a total amount of Rs.6,97,057/- Rs.5,02,099/- as per previous valuation + Rs.1,94,958/- as per present valuation) had been spent on the construction of the hotel was filed by the complainant. According to the Corporation, despite the fact that the complainant had failed to submit complete documents, second instalment of Rs.87,000/- was released to him on 19th January 1993, after adjusting therefrom the amount of interest due in terms of the conditions of loan.

5. Vide their letter dated 5th March, 1993, the Corporation requested the complainant to inform them about the progress of the project and avail the balance loan limit by submitting valuation report, Chartered Accountant's certificate towards further investment made by him for creation of fixed assets. According to the Corporation, since they had learnt that there was a proposal for laying a railway line between Amravati and Narkhed which was likely to affect the hotel project and the complainant had also defaulted in payment of interest despite repeated requests by them vide their letters dated 10th December 1993 and 24th February, 1994, they did not release further instalments of the loan sanctioned to the complainant. On the contrary, the stand of the complainant was that although by June 1993, he had spent Rs.27,25,510/- but no evaluation was done by the valuer of the Corporation and all his request for release of further instalments fell on deaf ears. All the time, the Corporation insisted on a written assurance from the railway authorities that the proposed Amravati and Narkhed railway line would not be passing through the hotel project site,

A before releasing the balance loan amount.

6. Finally, vide their letter dated 5th September, 1994, the Corporation informed the complainant that the entire balance unavailed term loan of Rs.26.23 lakhs had been treated as cancelled. The said intimation was followed by a legal notice dated 18th October, 1994 by the Advocate of the Corporation, wherein it was alleged that the complainant had failed to pay the interest on the amount already disbursed to him; as on 31st March, 1994 he was in arrears by more than Rs.1 lakh as interest and he had also failed to give any alternative proposal for the hotel project as the project at the existing site was likely to be affected by new railway track from Amravati to Narkhed. The complainant was called upon to repay the entire loan amounting to Rs.5,19,726/-, the outstanding amount as on 23rd September, 1994, within fifteen days from the date of receipt of the said notice.

7. It appears from the impugned order that by his letter dated 15th September 1994, the complainant protested to the recall of loan sanctioned to him. It is stated that the complainant pointed out that though a number of instalments of the loan had fallen due to be paid to the complainant, it was only as late as on 29th July, 1994, that he was asked to submit a letter from the competent authority regarding the status of the railway line and that he promptly submitted a certificate issued by the Commissioner, Amravati Division affirming that there was no proposal of Amravati – Narkhed line.

8. Having failed to get any favourable response from the Corporation, on 17th January 1995, the complainant filed a complaint with the Commission. It seems that during the pendency of the complaint before the Commission, the Corporation retraced their steps and proposed to renew the loan on certain conditions, which were not acceptable to the complainant.

9. As already stated, the Commission has accepted the

complaint and has come to the conclusion that there was no justifiable ground for the Corporation to deny disbursement of loan to the complainant. According to the Commission, having sanctioned the loan and then stopping its disbursement without any cause amounted to deficiency in service on the part of the Corporation. However, keeping in mind the passage of time, the Commission did not find it expedient to direct the Corporation to release further instalments of the loan, sanctioned as far back as in July 1992.

10. Being aggrieved by the award of compensation, the Corporation has preferred this appeal.

11. We have heard Mr. Santosh Paul, learned counsel appearing for the Corporation and Mr. Manish Pitale, learned counsel appearing for the complainant.

12. Learned counsel appearing for the Corporation submitted that in the instant case there was no deficiency in service as defined in Section 2(g) of the Act. The learned counsel argued that the Commission has exceeded its jurisdiction in examining the administrative decision of the Corporation to recall the loan as it felt that having regard to the past conduct of the complainant it was not in the interest of the Corporation to disburse the balance amount of loan to him. Relying on the decision of this Court in *U.P. Financial Corporation & Ors. Vs. Naini Oxygen & Acetylene Gas Ltd. & Anr.*,¹ it was submitted that unless the action of the Corporation was held to be *mala fide*, even a wrong decision taken by it was not open to challenge as it is not for the Courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Reliance was also placed on another decision of this Court in *Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr.*,² to contend that in commercial

1. (1995) 2 SCC 754.

2. (2002) 3 SCC 496.

- A matters the Court should not risk their judgments for the judgments of the bodies to whom that task is assigned. It was asserted that since the Corporation was of a *bona fide* belief that the entire hotel project of the complainant may get affected because of the proposed railway line and further there were defaults on the part of the complainant to discharge his liability towards quarterly instalments of interest, the decision of the Corporation not to disburse further instalments cannot be termed as *mala fide* or unreasonable and, therefore, there was no question of any deficiency in the service of the Corporation towards the complainant.

13. Supporting the impugned judgment, learned counsel appearing for the complainant, on the other hand, submitted that in the absence of any stipulation in the conditions of loan for stopping the disbursement on account of default in the payment of interest on time, the action of the Corporation in not releasing the remaining instalments on the stipulated dates not only affected the hotel project, it also caused a huge loss to the complainant as he was deprived of the special capital incentive by SICOM. It was argued that the non release of the instalments on the specious plea that there was a proposal for a railway line was *mala fide* inasmuch as there was no such proposal.

14. The short question arising for consideration is whether the Commission was correct in holding that there has been deficiency in service provided by the Corporation to the complainant on account of their failure to release the balance loan amount?

15. Clause (o) of Section 2 of the Act defines “service” to mean:-

- “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging 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;" A

The use of the words 'any' and 'potential' in the context these have been used in clause (o) indicates that the width of the clause is very wide and extends to any or all actual or potential users. The legislature has expanded the meaning of the word further by extending it to every such facilities as are available to a consumer in connection with banking, financing etc. Undoubtedly, when the bank or financial institutions advance loans, they do render 'service' within the meaning of the clause. In that behalf, there is no dispute. B C

16. "Deficiency" under clause (g) of Section 2 of the Act means:- D

"deficiency" means any fault, imperfection, shortcoming or inadequacy 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 service;" E

It is manifest from the language employed in the clause that its scope is also very wide but no single test as decisive in the determination of the extent of fault, imperfection, nature and manner of performance etc. required to be maintained can be laid down. It must depend on the facts of the particular case, having regard to the nature of the 'service' to be provided. F

17. Therefore, in so far as the present case is concerned, in order to examine whether there was a deficiency in service by the Corporation, it has to be seen if there was any inadequacy in the quality, nature and manner of performance which was required to be maintained by the Corporation in terms of their letter dated 2nd July, 1992, conveying the G H

- A sanction of loan to the complainant. As noted above, the Corporation was obliged to disburse to the complainant a loan of Rs.30 lakhs in instalments on complainant's furnishing the progress report of the project. Although, no specific information with regard to the actual dates for release of the instalments of
- B the loan amount are forthcoming, yet it can be gathered from the correspondence on record that the loan amount was to be disbursed periodically (perhaps half yearly), on the basis of the report of the approved valuer on the progress of the project. It is evident from Corporation's letters dated 5th March, 1993,
- C 10th December, 1993, 24th February, 1994 and 29th July, 1994 that the complainant not only failed to furnish the progress report, he also did not discharge his liability towards interest, as demanded from him from time to time. As already stated, even the cheque in the sum of Rs.30,000/- issued by the complainant to the Corporation on 2nd September, 1992
- D towards up-front fee was returned unpaid by his bankers. In Corporation's letter dated 24th February, 1994 it was alleged that the complainant had not only failed to pay interest, it was also found on inspection on couple of occasions by the Regional Manager that during the last four months there was
- E no further progress in implementation of the project. It is significant that these allegations and details of interest due from the complainant had not been seriously disputed by the complainant either before the Commission or in the counter affidavit filed by him in this appeal. In the background of the
- F factual scenario as emerging from the material on record, we are convinced that there was no shortcoming or inadequacy in the service on the part of the Corporation in performing its duty or discharging its obligations under the loan agreement. The Corporation was constrained not to release the balance
- G instalments and recall the loan on account of stated defaults on the part of the complainant himself. Non release of loan amount was not because of any deficiency on the part of the Corporation but due to complainant's conduct and therefore, the failure of the Corporation to render 'service' could not be
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held to give rise to claim for recovery of any amount under the Act. A

18. We also find substance in the contention of learned counsel for the Corporation that unless the action of a financial institution is found to be mala fide, even a wrong decision taken by it is not open to challenge, as the wisdom of a particular decision is normally to be left to the body authorized to decide. In *U.P. Financial Corporation & Ors. Vs. Naini Oxygen & Acetylene Gas Ltd. & Anr.* (supra) this Court had observed that a Corporation being an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge, in the discharge of its functions, it is free to act according to its own right. The views it forms and the decisions it takes would be on the basis of the information in its possession and the advice it receives and according to its own perspective and calculation. In such a situation, more so in commercial matters, the court should not risk their judgments for the judgments of the bodies to which that task is assigned. It was held that: (SCC p. 761, para 21) B C D

"Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable". E F

19. Having considered the matter in the light of the correspondence exchanged between the Corporation and the complainant, we have no hesitation in holding that there has not been any deficiency in the service the Corporation was required to provide to the complainant. In our opinion, the Commission was not correct in coming to the aforestated conclusion. We are of the view that the complainant being himself a defaulter right from inception of his dealing with the Corporation, when G H

A his cheque in the sum of Rs. 30,000/- got dishonoured, coupled
with persistent defaults in discharging his liability to the
Corporation towards interest, despite repeated demands, he
cannot be permitted to plead at the later stage that he suffered
on account of deficiency in service by the Corporation because
B of non-disbursement of balance instalments of loan by them.
As was observed by this Court in *Jagdamba Oil Mills* (supra),
while not insisting upon the borrower to honour the
commitments undertaken by him, the Corporation alone cannot
be shackled hand and foot in the name of fairness. Fairness
C cannot be a one-way street. Where the borrower has no
genuine intention to repay and adopts pretexts and ploys to
avoid payment like in the present case, he cannot make the
grievance that the Corporation was not acting fairly, even if
requisite procedures have been followed.

D 20. For the foregoing reasons, we allow the appeal; set
aside the order passed by the Commission and dismiss the
complaint filed by the complainant. Amount deposited in terms
of order dated 19th July, 2004 shall be released to the
Corporation on maturity of the fixed deposit. There shall,
E however, be no order as to costs.

N.J.

Appeal allowed.