

By hand  
07/06/2024

1 Consumer Complaint No.

STT. ₹. 459  
06/06/24

Date of Filing : 25.08.2024

Date of Judgment: 21.05.2024

Duration: 20 Months 27 Days.



**DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION**  
**JALNA.**

**CONSUMER COMPLAINT NO. 276 OF 2022.**

Vilas S/o Vishwanathrao Lakhmale,  
Age:- 57 Years, Occu.:- Service,  
R/o:- Saraswati Colony,  
Behind Ganpati mandir,  
Jalna, Dist:- Jalna. ....Complainant

**Versus**

The Manager,  
Bank of Maharashtra, Branch,  
Near Shani Mandir, Old Jalna,  
Dist:-Jalna. ....Opponent

**Coram**

(Smt. Aparna Hemant Kate, Hon'ble President)  
(Shri. Uday Dattu Dalvi, Hon'ble Member)  
(Shri. Santosh Changdeo Nikule, Hon'ble Member)

**Appearance:**

For Complainant:- Adv. M. S. Dhannavat.  
For Opponent:- Adv. Vinayak. G. Chitnis

**JUDGEMENT**

Dated:-21/05/2024

(Per- Hon'ble Shri. Santosh Changdeo Nikule, Member)

1). Present complaint is filed by the complainant under section 35 of the Consumer Protection Act, 2019.

2). The case of the complainant in short is that, the complainant is a resident of Jalna. The complainant is having individual saving account with the opponent bank bearing Account No. 20148049347. For the purpose of transactions the opponent has issued ATM card to the complainant.

The complainant on 29/04/2022 went to the ATM, situated at Shani Mandir Chowk, Old Jalna for withdrawing cash amount and the complainant has withdrawn Rs. 19,000/- (Rs. 9,500 + 9,500) by doing two transactions. Thereafter again on 02/05/2022 the complainant went to the same ATM and had withdrawn Rs. 19,000/- (Rs. 9,500+9,500) by doing two transactions. The complainant did not received the receipt about the transactions.

On 13/05/2022 while perusing the pass book entries the complainant came to know that, for two transactions of Rs.9,500/- each i.e. totally Rs. 19,000/- dated 29/04/2022 total four transactions were reflected and amount of Rs. 38,000/- was deducted and similarly two transactions of Rs.9,500/- each i.e. totally Rs. 19,000/- dated 05/05/2022 total four transactions were reflected and total amount of Rs. 38,000/- was deducted.

The complaint had withdrawn an amount of Rs. 38,000/- from the said four transactions each of Rs. 9,500/- and total amount of Rs. 76,000/- was wrongly deducted showing eight transactions from his savings account.

That in all the complainant has received only Rs. 38,000/- (four entries of Rs. 9,500/-) from the above said transactions, but excess amount of Rs.38,000/- were wrongly debited to his saving account.

The complainant immediately on the same date i.e. 13/05/2022 and thereafter on 26/05/2022 informed the opponent about the said transactions



and requested for refund of the money which were wrongly debited from his saving account. The opponent rejected the complaint of the complainant and informed the complainant to deposit Rs. 590/- towards the charges for pre-arbitration process. The complainant thereafter sent a legal notice to the opponent on dt. 24/06/2022 and requested for the CCTV footage and the log book entries of the said transactions. The opponents received the legal notice but did not take any efforts to reply it. Therefore being aggrieved and dissatisfied by the behavior of the opponent the complainant filed the present complaint before this commission and prayed for getting directions to the opponent to pay the deducted amount of Rs. 38,000/- along with Rs. 12,000/- in respect of mental agony, physical harassment and expenses.

3). Notice were issued to the opponent; the opponent appeared and filed their written version. In the written version the opponent has accepted that the complainant is the saving account holder of the opponent bank. The rest of the contentions of the complainant are denied by the opponent bank. The opponent has replied that the complainant has performed four transactions of Rs. 9,500/- on dt. 28/04/2022 and another four transactions of Rs. 9,500/- on dt. 02/05/2022, and all the said transactions were found to be successful. As such the complainant has received the total amount as per transactions performed by the complainant. Also the complainant has not deposited the requisite fees for the further process of the arbitration. The opponent has already informed about the rejection of the claim to the complainant. Also the complainant was informed to deposited Rs. 590/- per transaction for further process of arbitration as per the norms of the NPCI. But the complainant has not deposited the requisite amount therefore the complaint of the complainant was not forwarded to the NPCI. The opponent

has filed the copies of the mail along with the written version, and prayed for rejection of the complaint with costs.

4). Perused the complaint, written statement, written arguments, documents filed by the parties, etc. According to the rival contentions of the parties following points arose for our consideration, for which the findings are as under,

Sr. No.	Issues	Findings
1.	Weather the complainant is a consumer as per section 2(7) of C P Act 2019?	In Affirmative
2.	Weather the opponent is liable for deficiency in service and unfair trade practice?	In Affirmative
3.	What Order?	As per Final Order

5). **Issue No. 1:-** The complainant is having individual saving account with the opponent bank bearing account no. 20148049347, and for the purpose of transactions the opponent has issued ATM card to the complainant. Therefore the complainant is a consumer of the respondent. Hence we answer the issue no.1 as affirmative.

6). **Issue No. 2:-** The complainant had performed four transactions of Rs. 9,500/- (Total Rs.38,000/-) on dt. 28/04/2022 and another four transactions of Rs. 9,500/- (Total Rs. 38,000/-) on dt. 02/05/2022. Therefore on the above mentioned dates in all total eight transactions were done by the complainant, but only four transactions were successful and the other four transactions were wrongly debited by the



opponent. The complainant filed written complaint on dt. 13/05/2022 regarding the above transactions and requested for refund of money. The opponent received the complaint but just sat over the complaint till dt. 26/05/2022. The complainant again visited the office of the opponent on dt. 26/05/2022 and the opponent informed that the transaction performed by you was successful therefore your claim is rejected and if you are not satisfied then you can apply for pre-arbitration. The complainant again filed an application on dt. 26/05/2022 and requested for pre-arbitration. The opponent on dt. 04/06/2022 informed the complainant that the acquirer bank has informed that "transaction is successful and claim is rejected" therefore if you want to go for further process of arbitration which is next step after pre-arbitration then you have to pay NPCI charge of Rs.590/- per transaction. After payment of the charges then the opponent will proceed for the further step of arbitration.

7). While perusing the documents on record it reveals that the opponent after receiving the complaint has not taken any efforts to enquire about the alleged transactions within specific time. As per the circular of the reserve bank of india bearing no. RBI/2019-20/67/DPSS.CO.PD No.629/02.01.014/2019-20 under the caption "**Harmonisation of turn around time (TAT) and customer compensation for failed transactions using authorized payment systems**" dt. 20/09/2019 directives were issued to all the banks that while performing transactions at Automated teller machines (ATMs) including micro-ATMs if the customer's account is debited but cash not dispensed then in such cases pro-active reversal of failed transaction should be done within a maximum of five days after the date of transaction.

8). The issue of charge back, pre-arbitration and arbitration is raised by the opponent. The national payment corporation of India (NPCI) has issued guidelines in respect of charge back, pre-arbitration and arbitration under the caption "Adhar Enables payment services (AEPS)" the relevant clauses of said guidelines are reproduced for ready reference;

**Clause:- 2.5 Maintaining transaction records** Each member should maintain records of all transactions for a minimum period as stipulated by the laws. In case of disputes, members should keep records of all disputed transactions along with supporting documents until the disputes are resolved amicably. Members should provide details of all disputed transactions to counter party members whenever requested. In AePS BCS, back office system last 3 months data will be available for each and every Member Bank.

**Clause:- 2.6 Daily reconciliation** It is important for members to perform daily reconciliation of AEPS transactions on T+1. Members should daily reconcile both issuing and acquiring transactions considering CBS data, switch data, network files, Micro ATM terminal reports, etc. For failed/unsuccessful transactions, acquirers should process pro-active Credit Adjustment without waiting for for the issuing bank to raise a chargeback.

However, for failed/unsuccessful transactions at issuer bank end, where online reversal has not been done, bank should take appropriate action immediately post reconciliation. Proper implementation of daily reconciliation on T+1, shall not only help the banks to have a better control over the GLs for AEPS transactions and address customer complaints effectively but shall also benefit the overall AEPS ecosystem.





Clause :- 4.2.3 Stage III - Pre-Arbitration If the customer or Issuing bank is not satisfied by the evidences / documents provided by the acquirer at the time of re-presentment, Issuer can raise pre-arbitration through BCS system. Issuer bank is given the facility of raising pre-arbitration if proper proof of dispensing of cash/goods are not provided by the Acquirer while representing a chargeback. For all cases of pre-arbitration the timeframe for raising pre-arbitration is within 30 days from the next day of re-presentment date. Acquirer bank has to respond (accept or reject) the pre-arbitration raised by Issuer bank within 17 days from the next day of pre-arbitration date. If the pre-arbitration is not accepted or rejected within the timeframe, it would be considered as deemed accepted by acquirer.

Clause:- 4.2.4 Stage IV - Arbitration If the customer or issuer is not satisfied by the evidences / documents provided by the acquirer at the time of re-presentment and while rejecting the pre-Arbitration, Issuer may refer the dispute to arbitration through BCS. The timeframe for referring a dispute to arbitration is 30 days from the date of pre-arbitration rejection. Arbitration dispute raising is a non-financial stage and will not have any impact in daily settlement. In the event of Arbitration dispute not being resolved amicably between the Issuer and Acquirer bank, the dispute will be referred to an Arbitration Panel. The members can view the status of cases referred to arbitration both as an Issuer and Acquirer along with the decision given by Arbitration Panel.

From the above guidelines it can be asserted that the issuer bank was duty bound to protect the interest of the customer, and for that purpose the issuer bank must refer the dispute to the higher mechanism for getting resolved

earlier. But the opponent has taken a casual behavior in respect of the alleged transactions. The opponent has filed the claim of the complainant to their claim department, in support of that the copy of emails are there on record. From the bare perusal of the emails it reveals that the opponent has forwarded two transactions only to the claim department having trace no.212220026396 and 211821004010. The other six transactions were not forwarded to claim department for enquiry. Accordingly the claim department of the opponent bank ought to have forward all the eight transactions with their trance number and CRM ID for the purpose of charge back to the acquirer bank. Therefore the remaining six transactions were not forwarded to the acquirer bank for the purpose of charge back or pre-arbitration. The opponent has filed a copy of mail dt.05/11/2022 in which Trace number, CRM ID, Transaction date and amount is mentioned. Though it is mentioned in the email but was not forwarded for the purpose of charge back or pre-arbitration to the acquirer bank. Therefore the acquirer bank has replied for only for those successful transactions which were sent by the opponent bank. This act of the opponent itself contributes grave negligence in providing services to the customers.

9). As per the NPCI circular NPCI/NFS/OC No.23/2011-2012 dt. 21/04/2011 it is mentioned that,

**Section 8.3.4: Stage IV- Arbitration by Manual Process**

**Clause:-2- The member bank has to pay Rs.500/- as processing fee for referring a dispute for arbitration.**

From the above circular it is evident that the opponent has arbitrarily demanded the complainant to deposit the arbitration fees of Rs.590/- for each transaction.



10). The National payments corporation of india has issued circular no. NPCI/AePS/2019-20/009 dt. 16/10/2019 in which the role and responsibilities of the issuer and the acquirer bank are specifically mentioned. The relevant extract of the circular is reproduced here-in-under;

**Roles and Responsibilities (Cash withdrawal / BHIM Aadhaar)**

**Acquirer / Issuer**

a) For transaction failures at Issuer's Switch and NPCI switch, it is the responsibility of the Issuer Bank to reverse the amount to customer's account.

b) For transaction failures at Acquirer/BC/Merchant location and where customer has not received Cash, availed Good or Services: - Acquirer/BC/Merchant to initiate a credit adjustment within 4 calendar days from the transaction date. Amount to be reversed to the Customer's account within 5 calendar days. –

Where Acquirer/BC/Merchant have failed to initiate a Credit adjustment/Refund, if the customer lodges a complaint with the Issuing bank, Issuing bank to initiate a chargeback with specific MMT (Member Message Text) as 'Transaction not successful – Failed at BC/Merchant location' to identify disputes arising due to such Failed Transactions.

The opponent bank ought to have followed the above directions issued by their superior authority, but the opponent deliberately ignored his responsibility towards the complainant. Therefore the opponent has acted arbitrarily and the opponent was deficient in rendering services to the



complainant by not resolving the dispute of the complainant through the proper mechanism provided by the higher authorities, for which unnecessarily the complainant has to suffer.

11). The complainant has raised issue regarding non disclosure of the CCTV footage by the opponent. From the perusal of the record it reveals that the complainant has demanded the CCTV footage but the opponent has not provided the same. It is binding on the part of the opponent to preserve the copy of the CCTV footage of the alleged transaction. The opponent is a issuer bank and ought to have demanded the copy of CCTV footage from the acquirer bank. The opponent just relied on the representment made by the acquirer bank but never demanded for the supported evidence from the acquirer bank. Though, it was specific contention of the complainant that the opponent has not provided the CCTV footage to him. Surprisingly the opponent has not denied the said contentions. The opponent had not uttered a single word in their written statement nor in the written argument about the non submission of the CCTV footage.

The Hon'ble National Consumer Dispute Redressal Commission, in its judgment dated 15 March 2024 in the case of State Bank of India v/s Dr. Sayed Arman Rabbani had made following observations,

**“It is an admitted case that CCTV recording was provided by the respondent No.2-Punjab National Bank to the petitioner State Bank of India but despite request of the complainant a copy of the said video footage was not provided to him. Though according to the petitioner bank the said video footage was shown to the complainant and his son-in-law when they visited the bank, that in our opinion would not be sufficient and considering the fraudulent withdrawal claimed by the**



complainant the bank ought to have made available a copy of the aforesaid CCTV footage to the complainant. The petitioner bank, therefore, was deficient in rendering services to the complainant, by not making available a copy of the aforesaid CCTV footage to him.”

The Hon'ble State Consumer Dispute Redressal Commission, New Delhi in its judgment dated 13 October 2022 in the case of ICICI bank Ltd v/s Nalini Sirohi & anr. had made following observations,

“Moreover, as per the National Payments Corporation of India (NPCI) circular NPCI/2012-13/NFS/2737 dated 26.03.2013, all banks have to facilitate providing CCTV recording of failed ATM transactions to bank customers when they ask for it. However, in the present case, the Respondent no. 2 had failed to provide the CCTV footage of the concerned ATM to Respondent no. 1. Also, the Appellant in the present case failed to fetch the CCTV footage of the alleged transaction till date”.


“Additionally, perusal of record shows that the Appellant had only filed JP log before the District Commission and had failed to provide Cash tally, EJ report, switch report and CCTV footage in order to prove its contention that the cash was properly dispensed and the transaction was successful. Mere bald statement by the Appellant without any evidence will not justify the reversal of the award passed by the District Commission”.

“We are of the view that the Appellant has failed to discharge its duty as the concerned official of the Appellant failed to



provide any of the abovementioned report or CCTV footage of the concerned ATM to the Respondent no. 1 and even failed to file any evidence relating to the same before the District Commission as well as before this Commission to prove that the money has been collected by the Respondent no. 1 on the subject date.”

The Hon'ble State Consumer Dispute Redressal Commission, Panchakula in its judgment dated 04 January 2024 in the case of State Bank of India v/s Suraj Bhan had made following observations;



“Legal implication which would flow would thus be: that there is absolutely no evidence available on record in order to prove, as to whether or not, any CCTV footage was secured or preserved of date 04.03.2016. Evidence of above quality would have strengthened the pleaded case of appellant-bank that alleged transaction of Rs.20,000/- was in fact successfully conducted on 04.03.2016. Having failed to lead the basic evidence in form of CCTV footage of 04.03.2016, the appellant-bank has been rightly non-suited through impugned order dated 17.01.2018. Thus, the inescapable conclusion of this Commission in scenario of available facts and evidence is that; learned District Consumer Commission did not err, while observing that cause projected by complainant/respondent is not accentuated with any false assertion. This Commission does not find any justifiable ground to upset the well reasoned finding recorded by learned District Consumer Commission-Rewari through its order dated 17.01.2018 and to interfere in same. Resultantly, impugned order dated 17.01.2018 is maintained, affirmed and upheld. Present appeal, being devoid of any substance is dismissed on merits as well”.



From the above said observations it is evident that the opponent failed to produce the CCTV footage which would be a concrete evidence for the proper adjudication of the dispute of the complainant. The opponents have deliberately sat over the claim of the complainant. The Opponents had knowledge about directions of the Reserve bank of india and the National Payment corporation of india in respect of failed transactions but inspite of that the opponent acted arbitrarily. This act of the opponent contributes grave negligence, injustice and deficiency in service towards complainant. As all the documents were already submitted to the opponents, the opponent is trying to skip the responsibility and liability of the payment. Therefore according to natural justice it would be just and proper to direct the opponents to pay complainant Rs. 38,000/- along with 8% p.a. interest from 13/05/2022 till the date of actual payment. Hence this commission holds the opponent no.1 and 2 responsible and liable for it. Hence we answer the issue no.2 as affirmative.

6). **Issue No.3:-** In view of the reasons discussed in the Issue No.1 and 2 this commission passed the following order.

**ORDER**

- 1). The complaint of the complainant is allowed.
- 2). The opponent is here by directed to pay Rs. 38,000/- to the complainant within one month from the date of this order along with 8% p.a. interest from dt.13/05/2022 till the date of actual payment.

- 3). The opponent is hereby directed to pay Rs. 5,000/- towards mental agony and harassment and the cost of litigation Rs. 5,000/- to the complainant within one month from the date of this order.
- 4). Copy of order is to be provided free of cost to both the parties.

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Santosh Changdeo Nikule  
(Hon'ble Member)

Uday Dattu Dalvi  
(Hon'ble Member)

Aparna Hemant Kate  
(Hon'ble President)

DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION, JALNA.

“प्रमाणित सत्यप्रत”

R. H. Havan  
प्रबंधक 6/6/2024

जिल्हा ग्राहक तक्रार निवारण आयोग  
जालना