

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
ERNAKULAM**

**Dated this the 18<sup>th</sup> day of July, 2024**

Filed on: 03/08/2023

**PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

**C.C. NO. 534/2023**

**COMPLAINANT**

1. Mary Bonifus, 16/387, Darsan, Edakochi, Columbus Road, Kochi-682010
2. P.T. Boniface, 16/387, Darsan, Columbus Road, Edakochi, Kochi-682010

(Rep. by Adv. Cibir Varghese, Judges Avenue Road, Kaloore, cochin 17)  
**Vs.**

**OPPOSITE PARTY**

Visudha Yousepin Sadhu Jana Sangham, Regd No ER 328/10, 22/1215  
Valummel Road, Thoppumpady PO, Kochi-682002

**FINAL ORDER**

**D.B. Binu, President:**

**A. brief statement of facts of this complaint is as follows:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainants, Mrs. Mary Bonifus and Mr. P.T. Boniface, were ordinary members of the Visudha Sadhu Janasangham at Thoppumpady, Kochi, for over 15 years and became shareholders in 2018, holding 800 shares each. They availed the shares by issuing crossed cheques of Rs. 8000 each, which were honoured on 12/10/2018. Since then, they were entitled to a 15% annual dividend. The Sangham, under the tenure of Ex-Secretary Franklin C.X, had resolved to offer this dividend, exempting the shareholders from the weekly subscription of Rs. 20 from 2019-2020 onwards.

Despite being entitled to dividends that should cover their subscription fees, resulting in a credit balance of Rs. 60, the complainants faced issues when Mrs Mary Bonifus's unmarried brother passed away. The Sangham refused to pay the Rs. 15,000 death benefit as per their bylaws. This refusal caused the complainants irreparable damage, stress, and mental agony, highlighting a serious deficiency in service and unfair trade practices by the Sangham.

After several failed attempts to resolve the issue with the Sangham, the complainants sent a lawyer's notice on 06/06/2023 and received a reply on 04/07/2023, which denied any service deficiency. The complainants allege that the Sangham's actions amount to exploitation and unjust enrichment.

The complainants seek compensation of Rs. 20,000 for the costs incurred from repeated visits to the Sangham office, legal notices, and other expenses, with 6% interest per annum. They also claim Rs. 50,000 for mental agony and humiliation, with 6.5% interest per annum, and Rs. 15,000 for the exequial benefit with 12% interest per annum. Additionally, they seek Rs. 16,000 towards their shares with 15% annual interest since the death of Mrs. Mary Bonifus's brother. If the eligible benefits are not provided, the complainants seek to withdraw their shares amounting to Rs. 1,01,000.

## **2. Notice:**

The notice to the opposite party was sent by the commission. However, despite accepting the notice, the opposite party did not file a version, and as a result, they are set ex parte.

## **3. Evidence:**

The complainants submitted an ex-parte proof affidavit along with ten documents, marked as **Exhibits A1 to A10**.

- Exhibit A1: Lawyer's notice dated 06/06/2023 sent to OP.

- Exhibit A2: Copy of the passbook (PT. B & M.B).
- Exhibit A3: Copy of the ID card (PT. B & M.B).
- Exhibit A4: Copy of the death certificate of member No.3 issued by Parish Priest.
- Exhibit A5: Postal receipts and AD Cards.
- Exhibit A6: Reply dated 04/07/2023 received from the Opposite party.
- Exhibit A7: Envelope duly addressed and stamped for sending notices to the OP.
- Exhibit A8: RTI reply notice from Sangham Registrar.
- Exhibit A9: Legal notice to Ex-Secretary Mr. Franklin.
- Exhibit A10: Reply Notice from Mr. Franklin.

#### **4. Points for Analysis:**

- Whether the complaint is maintainable or not?
- Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- If so, whether the complainant is entitled to any relief from the side of the opposite party?
- Costs of the proceedings if any?

#### **5. Analysis and Legal Reasoning:**

The issues mentioned above are considered together and are answered as follows:

##### **i) Maintainability of the Complaint:**

In the present case, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The complainants, having made payments and █████ issued a passbook by the opposite party, are thus consumers as defined under the Act. The receipt evidencing payment to the opposite party (**Exhibit A-2**) supports this. Therefore, the complaint is maintainable.

##### **ii) Deficiency in Service and Unfair Trade Practice:**

The complainant initiated legal action to seek redress for the deficiencies in service and the engagement in unfair trade practices by the opposite party. The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite party. Therefore, the complainant's claims were considered credible and supported by the evidence.

The opposite party's conscious failure to file their written version despite having received the Commission's notice amounts to an admission of the allegations levelled against them. The case of the complainant stands unchallenged by the opposite party. The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

Reply Notice from Mr. Franklin, former secretary of the Sangham (**Exhibit A10**), extracted from the relevant portion below:

"The Share Holders, Mrs. Mary Bonifus and Mr. Thomas Bonifus need not pay weekly subscription as long as their shares are not redeemed by them, making them eligible for death benefit as per the bylaws of the Sangam. After my exit they have done away with Shares, the reason best known to them and some members are still to get back their Shares including your clients. They failed to issue the copies of amendment to the Registrar of Societies according to the Previous year Secretary.

The untimely death of Mrs. Mary Bonifus' brother on the month of March 2023 for which the Sangam refused to honour the Exequial Benefit which is to be paid before the burial of the human remains of the departed soul, as per the Christian rites.

The Sangam stated lame excuses that the Scheme has been shelved and not eligible for the benefit by the Secretary. Thomas' Couple case is genuine and they need to get both the principal amount of their Shares and also Exequial Benefit for Mr. Mary Bonifus' late brother with interest and cost thereto. Now the Death benefit is Rs.15000/- (Rupees Fifteen Thousand only)."

The reply notice from Mr. Franklin, the former secretary of the Sangham (**Exhibit A10**), unequivocally supports the complainants' claims. Mr Franklin clearly states that the shareholders, Mrs Mary Bonifus and Mr Thomas Bonifus, were exempted from paying weekly subscriptions as long as their shares were not redeemed, thereby making them eligible for the death benefit as per the bylaws of the Sangham. He further corroborates that the refusal to honour the exequial benefit following the untimely death of Mrs. Mary Bonifus's brother was unjustified and contrary to society's regulations. The fact that some members, including the complainants, have yet to receive their shares back further highlights the deficiency in service and unfair trade practices by the Sangham. Mr. Franklin's admission strengthens the complainants' position that they are entitled to both the principal amount of their shares and the exequial benefit, with applicable interest and costs.

The lack of response to the lawyer's notice and the subsequent failure to participate in the proceedings further corroborate the opposite party's

negligence and unfair trade practice. In the landmark case of **Indian Medical Association vs. V.P. Shantha (1995) 6 SCC 651**, the Hon'ble Supreme Court held that any act of omission or commission which causes a consumer to suffer due to lack of proper service constitutes a deficiency. Therefore, there is a clear deficiency in service and unfair trade practice from the side of the opposite party.

### **iii) Relief Entitlement:**

We determine that the complainants are entitled to relief due to the significant service deficiency and the unfair trade practices on the part of the opposite party. Consequently, the complainants have endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

### **iv) Costs of the Proceedings:**

In view of the above facts and circumstances of the case, the opposite party is liable to compensate the complainants for the costs incurred in pursuing this complaint.

*Upon reviewing Exhibit A2, the passbook issued by the opposite party, it is clear that the society's primary aim and objective is to finance the cremation of its members or their heirs. Tragically, after the unexpected death of the unmarried brother of the first complainant, the officials of the opposite party organization refused to pay the death benefit fund of Rs. 15,000 (Fifteen Thousand Rupees Only), as stipulated by the society's by-laws. This refusal is not only a violation of their own rules but also a failure in their duty as a charitable society to support their members during such a difficult time. The refusal to provide this essential benefit adds to the grief and hardship faced by the bereaved family, undermining the very purpose of the society's existence.*

We determine that issue numbers (I) to (IV) are resolved in the complainants Favor due to the significant service deficiency and the unfair trade practices on the part of the opposite party. Consequently, the complainants have endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainants.

**Hence the prayer is partly allowed as follows:**

- I. The opposite party shall pay ₹15,000 (Rupees Fifteen Thousand Only) to the complainants for the exequial benefit with 12% interest per annum from the date of the death of the first complainant's brother until realization.
- II. The opposite party shall pay ₹16,000 (Rupees Sixteen Thousand Only) towards the complainants' shares with 15% annual interest from the date of the death of the first complainant's brother until realization.
- III. The opposite party shall pay ₹30,000 (Rupees Thirty Thousand Only) to the complainants for mental agony and humiliation. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainants.
- IV. The opposite party shall also pay the complainants ₹10,000 (Rupees Ten Thousand Only) towards the cost of the proceedings.

The opposite party is mandated to comply with the directives mentioned above within 45 days from the date of receipt of this order. Failure to comply with the payment orders under point III will result in interest at the rate of 9% per annum from the date of filing the complaint (03-08-2023) until the date of full payment realization.

Pronounced in the open Commission on this the 18<sup>th</sup> day of July, 2024

  
D.B. Binu, President

  
V. Ramachandran, Member

  
Sreevidhya.T.N., Member