

Appeal No.  
142 of 2020

Punjab National Bank  
Vs.  
Ms. Preet Kaur

22.10.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 25.11.2020

Date of Final Hearing : 25.09.2024

Date of Pronouncement : 22.10.2024

**First Appeal No. 142 / 2020**

P.N.B. Main Branch  
Sector-4 BHEL Ranipur, Haridwar  
Through its Branch Manager

(Through: Sh. Nishant Chaturvedi, Advocate)  
.....Appellant

VERSUS

Ms. Preet Kaur D/o Dharampal  
R/o H. No. 1171, Vishnulok Colony, Jwalapur, Ranipur  
Tehsil and District Haridwar

(Through: Sh. Hassan Mansoor, Advocate)  
.....Respondent

**Coram:**

**Ms. Kumkum Rani,  
Mr. B.S. Manral,**

**President  
Member**

**ORDER**

**(Per: Ms. Kumkum Rani, President):**

This appeal has been directed against judgment and order dated 28.09.2020 passed by the learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as the District Commission) in consumer complaint No. 199 of 2019 styled as Preet Kaur Vs. P.N.B, Main Branch, Haridwar, wherein and whereby the complaint was allowed.

2. The facts giving rise to the appeal, in brief, are as such that the complainant is a poor labour in SIDCUL, Haridwar and has a saving bank

account bearing No. 1074000190351957 in the opposite party – P.N.B. On dated 19.08.2018, the complainant has withdrawn Rs. 2,000/- from her aforesaid account through P.N.B. ATM, BHEL and Rs. 77,214/- was left in her bank account; after that she had not made any transaction from her account. But from 24.08.2018 to 26.08.2018 Rs. 75,000/- were fraudulently withdrawn from her bank account through different transactions at ATM Ghaziabad and complainant has not received any SMS regarding these transactions. It is further alleged in the complaint that when the complainant came to know about the said fraudulent withdrawal, she immediately informed the Banking Tollfree number and lodged a FIR No. 0296/2018 in Police Station Ranipur, Haridwar. The complainant met with the officials of the opposite party several times, but all went in vain. On dated 07.04.2019, the complainant sent an application to the Banking Ombudsman, but no action was taken till date. Due to unfair trade practice of the opposite party and deficient service on the part of the Bank, the complainant suffered mental agony and financial loss. By moving the said complaint, the complainant has sought Rs. 75,000/- including interest.

3. The opposite party had submitted its written statement before the District Commission alleging that the complainant has filed the complaint on baseless and wrong facts. The opposite party conceded that the complainant has a saving bank account with the opposite party – Bank. It is further alleged that if the aforesaid transaction was done at Ghaziabad, then the District Commission has no jurisdiction to hear and decide the said complaint. There is no CCTV footage available on record regarding the said transaction from the Ghaziabad P.N.B. The said transaction was made due to the negligence on the part of the complainant for which she is liable for the same. It is further alleged that this is not the case of card cloning. Hence, there was no deficiency in service on the part of the Bank.

Therefore, the Commission has no right to entertain the complaint and the same is liable to be dismissed.

4. The District Commission after hearing both the parties and after taking into consideration the pleadings and evidence available on record, passed the impugned judgment and order on dated 28.09.2020 wherein it was directed to the opposite party to pay Rs. 75,000/- with simple interest at the rate of 6% p.a. towards the amount withdrawn from the complainant's account. The interest to be levied is from the date of institution of the complaint, i.e. 05.07.2019 till the date of final payment and further pay an amount of Rs. 5,000/- towards the costs of litigation.

5. Aggrieved by the impugned judgment and order of the District Commission, the opposite party has preferred the present appeal as appellant stating that the District Commission has erred on both facts and law in arriving at the decision that the appellant has committed deficiency in service, since the fraudulent transactions from the respondent's account are not even distantly attributable to the services being provided to the respondent by the appellant and the same is committed by persons unknown to the appellant, hence the complaint filed by the respondent is not tenable. The Commission below has failed to appreciate the fact that the appellant Bank duly investigated the said matter and reported the outcome to the Banking Ombudsman through mail dated 08.05.2019 which proves that the appellant tried its best to redress the grievance of the respondent. The Commission below ignored the contention of the appellant that the ATM at Ghaziabad is not under the jurisdictional territory of the appellant, hence the complaint of the respondent is liable to be dismissed on the ground of lack of territorial jurisdiction. The Commission below failed to appreciate that the PNB, Ghaziabad was not a party to the complaint case, thus the

complaint filed by the respondent suffered from non-joinder of PNB, Ghaziabad as a necessary party to the said complaint. This erroneous ignorance of this crucial fact blew the wind against the appellant Bank. The Commission below has failed to consider the fact that it is possible to withdraw money via an ATM card only when the card is in possession of the card-holder and has the ATM pin and hence the responsibility to preserve the ATM pin lies solely on account holder. There is no deficiency in service on the part of the appellant, hence the appeal deserves to be allowed and the impugned judgment and order is liable to be set aside.

6. Learned counsel for the respondent – complainant has stated that the complainant never shared her ATM card with pin-code to someone else; it always remained in the custody of the complainant.

7. We have heard learned counsel for both the party and perused the material available on record.

8. It is an admitted fact that there is a relationship of consumer and service provider between the appellant and respondent. It is also admitted that complainant is a poor labour in SIDCUL, Haridwar and she has a saving bank account bearing No. 1074000190351957 in the appellant Bank. It is not disputed that the complainant has withdrawn Rs. 2,000/- from her aforesaid account through P.N.B. ATM, BHEL on dated 19.08.2018. It is also not disputed that from 24.08.2018 to 26.08.2018 Rs. 75,000/- were fraudulently withdrawn from her bank account through different transactions through ATM Ghaziabad. There is only one issue that the aforesaid Rs. 75,000/- was fraudulently withdrawn by someone else due to not having sufficient safety measure in such electronic banking transaction.

9. We have also perused the guidelines of RBI through the notification Nos. RBI/2013-14/296 dated 27.09.2013 and RBI/2017-18/15 dated 06.07.2017. In the above guidelines dated 06.07.2017, it is mentioned in para Nos. 3, 4 & 5.

“3. Broadly, the electronic banking transactions can be divided into two categories:

- i. Remote/ online payment transactions (transactions that do not require physical payment instruments to be presented at the point of transactions e.g. internet banking, mobile banking, card not present (CNP) transactions), Pre-paid Payment Instruments (PPI), and
- ii. Face-to-face/ proximity payment transactions (transactions which require the physical payment instrument such as a card or mobile phone to be present at the point of transaction e.g. ATM, POS, etc.)

4. The systems and procedures in banks must be designed to make customers feel safe about carrying out electronic banking transactions. To achieve this, banks must put in place:

- i. appropriate systems and procedures to ensure safety and security of electronic banking transactions carried out by customers;
- ii. robust and dynamic fraud detection and prevention mechanism;
- iii. mechanism to assess the risks (for example, gaps in the bank's existing systems) resulting from

- unauthorised transactions and measure the liabilities arising out of such events;
- iv. appropriate measures to mitigate the risks and protect themselves against the liabilities arising therefrom; and
  - v. a system of continually and repeatedly advising customers on how to protect themselves from electronic banking and payments related fraud.
- Reporting of unauthorised transactions by customers to banks.

5. Banks must ask their customers to mandatorily register for SMS alerts and wherever available register for e-mail alerts, for electronic banking transactions. The SMS alerts shall mandatorily be sent to the customers, while email alerts may be sent, wherever registered. The customers must be advised to notify their bank of any unauthorised electronic banking transaction at the earliest after the occurrence of such transaction, and informed that the longer the time taken to notify the bank, the higher will be the risk of loss to the bank/ customer. To facilitate this, banks must provide customers with 24x7 access through multiple channels (at a minimum, via website, phone banking, SMS, e-mail, IVR, a dedicated toll-free helpline, reporting to home branch, etc.) for reporting unauthorised transactions that have taken place and/ or loss or theft of payment instrument such as card, etc. Banks shall also enable customers to instantly respond by "Reply" to the SMS and e-mail alerts and the customers should not be required to search for a web page or an e-mail address to

notify the objection, if any. Further, a direct link for lodging the complaints, with specific option to report unauthorised electronic transactions shall be provided by banks on home page of their website. The loss/ fraud reporting system shall also ensure that immediate response (including auto response) is sent to the customers acknowledging the complaint along with the registered complaint number. The communication systems used by banks to send alerts and receive their responses thereto must record the time and date of delivery of the message and receipt of customer's response, if any, to them. This shall be important in determining the extent of a customer's liability. The banks may not offer facility of electronic transactions, other than ATM cash withdrawals, to customers who do not provide mobile numbers to the bank. On receipt of report of an unauthorised transaction from the customer, banks must take immediate steps to prevent further unauthorised transactions in the account.”

10. In the guidelines RBI/2013-14/296 dated 27.09.2013, reference is mentioned regarding the circular No. DPSS PD CO. No. 513/02.14.003/2011-2012 dated September 22, 2011 on security issues and risk mitigation measures related to Card Present (CP) transactions and circulars DPSS (CO) PD No. 1462/2377/02.14.003/2012-13 dated February 28, 2013 and June 24, 2013 respectively on security and risk mitigation measures for electronic payment transactions, wherein various timelines were indicated for compliance. But several banks had approached for seeking further extension of the time line of September 30, 2013 for complying with the task of securing the technology infrastructure.

But the RBI had decided not to grant any further extension of time and ordered the following course of action is mandated:-

a. The issuing bank would ascertain, within 3 working days from the date of cardholder approaching the bank, whether the respective POS terminal/s where the said transaction/s occurred is/are compliant with TLE and UKPT/DUKPT as mandated.

b. In the event it is found that the POS terminals are non-compliant as mandated, the issuing bank shall pay the disputed amount to the customer within 7 working days, failing which a compensation of Rs.100 per day will be payable to the customer from the 8<sup>th</sup> working day.

c. The issuing bank shall claim the amount paid by it to the customer from the respective bank/s which have acquired the POS transaction/s in question.

d. The acquiring banks have to pay the amount paid by the issuing bank without demur within 3 working days of the issuing bank raising the claim, failing which the Reserve Bank of India would be constrained to compensate the issuing bank by debiting the account of the acquiring bank maintained with the Bank.

11. Thus, as per the guidelines mentioned in the above said notifications, if the issuing banks had not taken action upon receiving the



complaint about illegal and fraudulent transactions of ATM or credit card holder, then the issuing bank shall pay the disputed amount to the customers.

12. In the present case, the respondent has made the intimation to the Bank immediately about the fraudulent and illegal transactions to the tune of Rs. 75,000/-, but within three days, the appellant Bank did not take any action and as per the written statement and evidence of the appellant Bank, a letter was issued, but no concrete and reliable evidence has been given by the Bank to this regard whether such letter was actually dispatched to the respondent – complainant either through registered post or by email. The said act was not specifically denied in the written statement of the appellant – opposite party.

13. From the record, it is also evident that the fraudulent and illegal transactions of Rs. 75,000/- were made through PNB ATM at Ghaziabad. Respondent has clearly averred in the affidavit and evidence that she never intimated his particulars, CVV value of her ATM card and personal information to any other person to make the illegal transactions. If the illegal and fraudulent transactions were made without sharing pin-code CVV value and password to any other person, even then the transactions had taken place in any other city, i.e. Ghaziabad, in such circumstances, it will be deemed that there was no negligence on the part of the respondent – complainant and such transactions took place due to the reason that the Bank had not provided sufficient, full proof security for the ATM /Credit card transaction. The appellant Bank has stated in the written statement that this is not a case of card cloning whereas in the impugned judgment, the Commission below has high-lighted this point that as per the police investigation, such fraudulent transactions had taken place due to card

cloning. The appellant Bank has failed to file any CCTV footage on record to show that such withdrawals were actually made by the respondent – complainant by using her ATM card from ATM Ghaziabad. The appellant Bank has also not filed any concrete and reliable evidence on the factum that such fraudulent withdrawals were made by such ATM card number which was already issued to the respondent - complainant and there was no case of card cloning.

14. Learned counsel for the appellant has referred the following case laws, which are as follows:

**1. Revision Petition No. 2082 of 2017, Praveen Kumar Jain Vs. HDFC Bank Ltd. decided on 28.12.2023 (Hon’ble National Commission)**

**2. Revision Petition No. 3073 of 2016, State Bank of India vs. Dr. J.C.S. Katakya, decided on 03.05.2017 (Hon’ble National Commission)**

**3. First Appeal No. 112 of 2015, Chairman Punjab National Bank & Anr. vs. Leader Valves Ltd., decided on 13.03.2020 (Hon’ble National Commission)**

**4. Revision Petition No. 3333 of 2013, HDFC Bank Limited and another vs. Jesna Jose, decided on 21.12.2020 (Hon’ble National Commission)**

15. In the case of **Parveen Kumar Jain vs. HDFC Bank Ltd.** (supra), the Hon’ble National Commission has held that “as per these instructions,

there will be zero liability of a customer, where the unauthorized transaction occurs in the events of Contributory fraud/ deficiency on the part of the bank. The instructions also take care of third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system. If customer notifies the Bank of such transaction within three working days, then zero liability lies with the customer.”

In the above case, the Hon’ble National Commission has set aside the order so the State Commission as well as District Commission and allow the complaint with the directions to the respondent – HDFC Bank to reverse the transactions with respect to the fraudulent transactions which took place on dated 30.03.2014 for a total amount of Rs. 24,000/-. In case this amount has already been recovered from the complainant, the Bank is liable to refund the same alongwith interest / penalty charged on such amount and such refund shall be payable to the complainant alongwith interest with litigation charges.

16. In the case of **State Bank of India vs. Dr. J.C.S. Katakya (supra)**, the Hon’ble National Commission has held that “A plain reading of this provision is sufficient to establish that once the complaint was made citing specific incidents of unauthorised withdrawal, it was the duty of the Bank to have carried out the necessary verification in the matter, rather than washing their hands off from the whole episode. Evidently, there has been deficiency in service on the part of the Bank, vis-à-vis, the consumer/complainant. It is held, therefore, that the consumer fora below have made a correct appreciation of the facts and circumstances on record which deciding the complaint in favour of the complainant. Moreover, it is a settled legal proposition that the powers in the exercise of the revisional jurisdiction are used only if there is a jurisdictional error or material defect

in the orders passed by the consumer fora”. Therefore, on such discussion, the Hon’ble National Commission dismissed the revision petition on merit.

17. In the case of **Chairman, Punjab National Bank & Anr. vs. Leader Valves Ltd. (supra)**, the Hon’ble National Commission has held that “it is seen that the Complainant, on his part, had been diligent and dutiful in bringing the unauthorized transfers to the notice of the Bank without undue delay, he brought the unauthorized transactions to the Bank's notice the same day, in the evening, on checking his accounts. His responsibility ended there, and the Bank's responsibility started, it was the Bank's responsibility to identify the systemic failure, remedy the pecuniary loss and injury to the Complainant.”

In the abovesaid case, the Hon’ble National Commission has also confirmed the order of the State Commission wherein the award was made in favour of the complainant.

18. In the case of **HDFC Bank Limited and another vs. Jesna Jose (supra)**, the Hon’ble National Commission has held that “The first fundamental question that arises is whether the Bank is responsible for an unauthorized transfer occasioned by an act of malfeasance on the part of functionaries of the Bank or by an act of malfeasance by any other person (except the Complainant / account-holder). The answer, straightaway, is in the affirmative. If an account is maintained by the Bank, the Bank itself is responsible for its safety and security. Any systemic failure, whether by malfeasance on the part of its functionaries or by any other person (except the consumer / account-holder), is its responsibility, and not of the consumer.” and dismissed the revision and confirmed the order of the State Commission as well as the District Commission.

19. So in the light of the above cited case laws, it is proved that there was no negligence on the part of the respondent – complainant and she had immediately intimated about the occurrence / illegal transactions made from her ATM card to the Bank as well as to the police, but nothing was done by the Bank within stipulated period inspite of several requests of respondent –complainant. The illegal transactions were made through ATM Ghaziabad. It is not proved on record that the respondent had shared the pin-code of her ATM card or its password and personal information to someone else.

20. The appellant had not filed any such cogent evidence to this effect that the respondent was negligent and he has shared his confidential information about his ATM card to someone else, therefore, we find no negligence or carelessness on the part of the respondent.

21. We are of the considered view that the District Commission has not committed any error in granting the award alongwith interest and litigation expenses to the respondent – complainant. Thus, we are of the definite view that the District Commission has exercised the jurisdiction which was vested in it and the impugned judgment is perfectly and appropriately passed by the District Commission concerned. There is no perversity and infirmity in passing of the impugned judgment. Thus, the impugned judgment deserves to be affirmed and the appeal is liable to be dismissed.

22. Accordingly, the appeal is dismissed. Impugned judgment and order dated 28.09.2020 passed by the District Commission, Haridwar is hereby affirmed. No order as to costs of the appeal.

23. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be

uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this Order be sent to the concerned District Commission for record and necessary information.

24. File be consigned to record room along with a copy of this Order.

**(Ms. Kumkum Rani)**  
**President**

**(Mr. B.S. Manral)**  
**Member**

Pronounced on: 22.10.2024