

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 57 OF 2024

(Against the Order dated 25/05/2023 in Appeal No. A/37/2015 of the State Commission Assam)

1. HDFC BANK LTD

REGISTERED OFFICE AT HDFC BANK HOUSE SENAPATI MARG LOWER
PAREL WEST MUMBAI 400013 ITS BRANCH AT 1ST FLOOR JK KEDIA ROAD
HOJAI NAGAON ASSAM

NAGAON

ASSAM

.....Petitioner(s)

Versus

1. SATISH BAISHYA

SO LT PRAFULLA BAISHYA RO NATUN BAZAR HOJAI NEAR PWD COLONY
PO & PS HOJAI NAGAON ASSAM

NAGAON

ASSAM

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER :

MS. VASUDHA ARORA, ADVOCATE

FOR THE RESPONDENT :

NEMO

Dated : 09 July 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 25.05.2023 of the State Consumer Disputes Redressal Commission, Assam (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 37 of 2015 in which order dated 04.07.2015 of District Consumer Disputes Redressal Forum, Nagaon (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 31 of 2013 was challenged, inter alia praying for setting aside the order date 25.05.2023 of the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Appellant before the State Commission and Opposite Party before the District Forum and the Respondent (hereinafter also referred to as Complainant) was Respondent before the State Commission in FA/37/2015 and Complainant before the District Forum in Complaint No. 31 of 2013.

3. Notice was issued to the Respondent(s) on 19.01.2024. Written Arguments filed by Petitioner on 02.02.2024. On account of absence despite notice, respondent was proceeded ex-parte vide order dated 02.04.2024.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:

(i) Respondent herein who has an account in the Petitioner Bank vide Saving Banks Account No. 19921000006573 and holding a ATM cum Debit card which is issued by the Bank authority in respect of the aforesaid account. When he went to the aforesaid Bank for withdrawal of money then it came to his knowledge that a sum of Rs.35,000/- has been withdrawn by someone from his account. The transactions in connection with the account are duly informed through SMSs to the account holder but in the present case no information was received by the respondent herein through SMS or otherwise. The respondent herein visited the office of the petitioner bank many times but the bank always ignored the matter and kept the matter aside. Hence, respondent herein filed a complaint in the District Forum.

(ii) District Forum allowed the complaint with direction to the OP to pay the amount of Rs.45,000/- (including Rs.5000/- for the cost of proceeding and another Rs.5000/- for respondent's suffering, harassment and mental agony) with 6% on Rs.35,000/- from date of filing of the case till realization, observing further that if police is able to arrest the culprit and recover the money, the said money will be released in favour of the Bank.

(iii) Aggrieved with the orders of the District Forum, Petitioner herein filed an appeal in the State Commission. The State Commission dismissed the appeal and directed the Bank to comply with the direction given by the fora below.

5. Petitioner(s) have challenged the said Order dated 25.05.2023 of the State Commission mainly/inter alia on following grounds:

i. Because the present litigation arises out of the gross mis-conduct and negligence or ill-intention on the part of the Respondent who probably gave his ATM card and confidential pin to someone and has now dropped all the onus of his loss (if any) on the Petitioner Bank citing reasons of deficiency in services. That the Respondent did not exhibit the original ATM card but a photocopy of the same, since he could have done that had the card been in his custody. The lower Foras ignored this factum.

ii. That both the foras below ignored the admitted fact that at all times, before, during and after the time frame of the disputed the transactions, the ATM cum Debit Card was in the custody of the Respondent and the confidential PIN, that is pre-requisite for making an ATM withdrawal, was admittedly, only in the knowledge of the Respondent. That it is impossible

to make ATM withdrawals without being in physical custody of the ATM card and without the knowledge of the confidential Pin. Even to the farthest of imaginations, if the respondent had contended that the transaction was fraudulently made by some bank official and that is how the Respondent had been cheated, then since it being cyber-crime calls for a thorough police inspection and trial, which is beyond the jurisdiction of the Consumer Forums.

- iii. That the Hon'ble State Commission erred in presuming that the disputed transactions were fraudulent and the case in front of it was a case of theft/ cyber-crime, merely on the misrepresentation of the Respondent without calling for an investigation report from the Police and hence concluding that the Respondent had been subjected to financial hardships on account of deficiency in services on part of the petitioner. That the Foras below without waiting for the outcome of the criminal investigation had formed an opinion beyond their jurisdiction and acted like an investigating team thereby holding that the Bank is responsible for the loss of money from the Respondent's account due to an alleged fraudulent withdrawal by some unknown individual and in the same time holding another view that no ATM transaction was possible without an ATM card and thus creating confusion.
- iv. Because the State Commission were not justified in exercising its Jurisdiction without finding any short-coming, inadequacy in rendering the services by the Petitioner.

6. Heard learned counsel for the petitioner. On account of absence despite notice, respondent was proceeded ex-parte. In addition to the averments made under the grounds (para 5), the petitioner contended that the application to file additional evidence of SMS logs proving that the SMS alert of the disputed transactions was duly sent to the Respondent was dismissed on unlawful and untenable grounds. The petitioner relied upon the following judgements:

(i) **“State Bank of India Vs. K.K. Bhalla in Appeal No. 364 of 2008”**

decided on 07.04.2011 by NCDRC,

(ii) **“Khivraj Motors Vs. V. Chandrababu & Anr. in RP No. 120 &**

121 of 2000” decided on 09.11.2001 by NCDRC,

(iii) **“Branch Manager, State Bank of India Vs. Samuel Tirkey &**

Ors., 2013 (3) CLT 604 (WV)” and

(iv) **“Raghendra Nath Sen & Anr. Vs. Punjab National Bank in**

RP 3973 of 2014 decided on 17.12.2014 by NCDRC”

7. Before the fora below, the Respondent had contended that the withdrawals done from 29.06.2013 to 03.07.2013 are fraudulent and despite having SMS service active on his account he had not received the SMS alert within the said time period. Respondent further mentioned that the withdrawal from the ATM machine cannot be possible without the ATM card and secret PIN which was in the safe custody of the Respondent herein. One Sri. Nayan Jyoti Medhi, an official of the Petitioner bank also submitted his evidence on affidavit in chief who was cross-examined by the counsel for the respondent herein. In his chief he admitted the fact that from the period 29.06.2013 till 03.07.2013 there were withdrawals of money from the account of the respondent herein. The amount was illegally withdrawn from the account of the respondent herein and the bank failed to take care of the money of the respondent, there was deficiency of service of the petitioner bank as the respondent is the consumer under the said bank.

8. We have carefully gone through the orders of the State Commission, District Forum and other relevant records of the case. Rs.35,000/- was withdrawn in 7 transactions, 4 transactions on 29.06.2013, 1 on 02.07.2013 and 2 on 03.07.2013 from different locations like ATM Hojai Branch, NWD Guwahati, EAW Sonipat, and NWD Sonipat. Complainant came to know about these transactions on 12.08.2013, when he went to the branch to withdraw money. His account is in Hojai branch of HDFC bank. He lodged an FIR on 13.08.2013, whereafter a case under section 66A/66D I.T. Act was registered. Complainant also contended that he immediately informed the bank about these transactions and that he never got any SMS of these transactions, while he has always been getting SMSs of earlier transactions. Bank had contended that as the said ATM card was admittedly in his possession, such transactions were made with the consent of Complainant only as without ATM and Secret PIN, no ATM transaction can be made.

9. Keeping in view the evidence adduced by the parties, District Forum observed that four consecutive transaction were made in different places on 29.06.2013 allegedly by unknown person. District Forum finally held that amount of Rs.35,000/- was illegally withdrawn from the account of Complainant and as bank failed to take care, there was deficiency in service on the part of bank. State Commission, in appeal, relying on various case laws, and appreciation of the evidence, dismissed the appeal. Extract of relevant paras of orders of State Commission is reproduced below:

“16. We have given due consideration to the submission made by Mr. Chakrabarty and also perused the written argument for the respondent. From the discussions and the facts of the case of the complainant we find that there were seven transactions in all starting from 29/6/2013 to 3/7/2013 against which the respondent/ complainant did not receive any SMS alert. However the subsequent transactions carried out on the volition of the respondent/ complainant by way of withdrawal of money through ATM booth and by deposit of amount through deposit slip he received the SMS alert from the bank. Though CCTV camera was fitted to the booth at Hojai under the appellant HDFC bank however no such video footage of the relevant dates on which the three transactions were carried out from the said booth was produced by the respondent bank nor it is the case of the appellant bank that during the said relevant date the CCTV camera was out of

order. Nor there is any denial of the said fact regarding the existence of the facilities of CCTV camera within the HDFC ATM booth premises at Hojai. Under such circumstances we hold that that appellant bank failed to discharge its onus by disproving the fact pleaded by the respondent/ complainant about the fraudulent withdrawal of the money through the said transactions starting from 29/6/13.

17. The appellant bank also tried to project that the respondent/ complainant received the SMS alert during the said period starting from 29/6/13 to 3/7/13. In support of the said plea the appellant bank tried to establish the said fact by relying the amount deducted on 16/8/13 from the account of the respondent/ complainant. The said plea cannot be accepted inasmuch as it is admitted fact that the respondent/ complainant after 3.7.2013 carried out some transactions against which he received the SMS alert from the bank. However it is not on record the period for which Rs. 16.85 was deducted and whether it covers the SMS for the period 29-6-2013 to 3-7-2013 to disprove the facts pleaded in the complaint petition.

22. The learned Commission below mainly considered the failure on the part of the appellant bank to produce the CCTV footage while holding the appellant bank to be deficient in rendering it's service even on information of the disputed transaction. But it was also pleaded that the complainant failed to receive the SMS alert which the appellant bank failed to disprove. Accordingly by relying the decisions of the Hon'ble NCDRC, New Delhi in State Bank Of India vs J.C.S. Kataki (Supra) we accordingly upheld the findings that the appellant bank failed to render due service to the respondent/ complainant and as such the judgment and order is upheld though on another ground i.e. for non receipt of the SMS alert by the respondent/complainant against the disputed transaction."

10. In this case, there are concurrent findings of both the fora below against the Petitioner herein. As has been held by Hon'ble Supreme Court in catena of judgments^[1], revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record. Both State Commission and District Forum have given well-reasoned orders and we are in agreement with their observations/findings. There is no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, RP is dismissed.

11. The pending IAs in the case, if any, also stand disposed off.

^[1] Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

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DR. INDER JIT SINGH
PRESIDING MEMBER