

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 645 OF 2022

(Against the Order dated 30/03/2021 in Appeal No. 954/2014 of the State Commission
Karnataka)

1. BANK OF INDIAPetitioner(s)

Versus

1. DR. MAHESH KUMARRespondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER : FOR THE PETITIONER : MR. PUSHPENDRA KR. DHAKA,
ADVOCATE

MR. DEEPAK SHARMA, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT : MR. NIHANT PANICKER, ADVOCATE

Dated : 27 May 2024

ORDER

1. This Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against impugned order dated 30.03.2021, passed by the Karnataka State Consumer Disputes Redressal Commission, Bengaluru (the State Commission) in FA No. 954 of 2014, wherein the Appeal filed by the Complainant/Respondent was allowed and setting aside the Order dated 15.03.2014, passed by the District Consumer Disputes Redressal Commission, Mysuru (the "District Commission") in Consumer Complaint No.38 of 2013.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. Dr. Mahesh Kumar is referred to as the Complainant (Respondent herein) and Bank of India, Mysore Branch is the Opposite Party/OP (Petitioner herein).

3. Brief facts of the case, as per the Complainant, are that he was an NRI and resided in England for 15 years as a doctor, before returning to India in 1990. He receives pension from the British Govt in Great Britain Pounds deposited in his Bank of Scotland UK A/c and he has permission from Reserve Bank of India (RBI) to maintain FCNR Accounts and Deposits. He is employed at Chitra Hospital, Irwin Road, Mysore. Since 1998, he had various encashments and deposits with the Opposite Party (OP), wherein short-term deposit accounts were opened and closed as needed. Due to the OP's lack of facility for issue and holding FCNR bonds and certificates, these transactions were typically conducted through the Bangalore or Chennai Branch and then transferred to the Complainant in Mysore.

4. On 01.11.2011, using internet banking, he wanted to transfer some of his FCNR funds from Bank of Scotland UK to his account with the OP Bank. Although provided with the necessary IFSC Code and details, he was informed that the transaction would need to be routed through the Bangalore Head Office due to lack of foreign exchange facilities with OP. Following the transfer of GBP 40,000 to his OP account, he requested that the funds be kept in a FD for a year, as done previously. However, upon checking his account on 30.11.2011, he noticed a significantly higher amount, Rs.31,00,000/- deposited in his account, which he did not authorize. Inquiries revealed that it was transferred from Mangalore branch as a result of foreign exchange conversion, despite his instructions to keep the funds in GBP. Despite his requests to revert the conversion and credit the original GBP amount, the OP claimed inability to do so, citing the Bank of Scotland UK's conversion of funds to Indian currency. However, Bank of Scotland revealed that they correctly executed the transfer in GBP without instructions to convert to INR.

5. Despite his requests to rectify the mistake, the OP failed to take any action. The Complainant pointed out previous instances where the OP had facilitated currency conversions as requested, including obtaining RBI permission when necessary. Consequently, feeling aggrieved, he filed CC No. 38/2013 before the District Commission against the OP, seeking direction to reconvert the INR to GBP at the original rate, to maintain the GBP as a fixed deposit as instructed, and to pay compound interest on the amount. Additionally, he sought compensation of Rs.4,50,000/- for monetary loss, inconvenience, mental agony, and hardship.

6. In its reply before the District Forum, the OP contended that there was no deficiency in service. The OP branch clarified that they are not authorized dealers in foreign currency. Thus, transactions involving foreign currency were handled by main branch, Bangalore which has not been impleaded. The amount in question was transferred via other OP branch in Scotland UK utilizing a Swift Message. OP contended that Mangalore branch promptly processed the request and credited the amount to the Complainant's account within time. OP had no direct role in the currency conversion process, as evidenced by the Swift Message confirming the crediting of funds to his SB A/c in INR. OP refuted the claim that they received any written request from the Complainant to maintain funds in GBP without converting them into INR. Once funds are credited in INR, the Foreign Exchange Management Act (FEMA) and RBI rules prohibit their re-conversion into foreign currency. OP asserted that the complaint stem from fluctuations in the value of INR and urged dismissal of the complaint.

7. The District Commission vide Order dated 15.03.2014 dismissed the complaint, stating that the Complainant has not prove that there has been a deficiency on the part of OP Bank Branch.

8. Dissatisfied by the District forum order, the Complainant filed Appeal No. 954 of 2014 and the learned State Commission in its order dated 30.03.2021 partly allowed the Appeal and set aside the Order passed by the District Commission, with the following findings:

***“10. The findings of the Commission below, remedy if any to the complainant is elsewhere and not before Consumer Commission could not be acceptable, since complainant has shown that he is a Diamond Customer of OP and the OP is a proven service provider, as such has to act not only in accordance with law, but as instructed by the customer and to their whims and fancies. It is not that, he has begun his account holdings just before raising consumer complaint, but he is a Diamond Customer, even as per the document of OP. As already stated, if some mistakes have been committed by OP, could have set right at an initial stage itself. However, they want to defend themselves, contending are not at fault and the fault if any is either the complainant or his Banker at U.K, which is nothing but perverse actions or indifferent actions or commissions as the case may be of OP to save their skin is not appreciated at all. In such view we are of the view, it is not necessary to make Mangalore and Bangalore branches of OP or their head office parties to the complaint to get redress the grievance of the complainant, since complainant held his account with OP. Thus, it is held, complainant has shown from cogent documents that, his Banker at U.K has not transferred GBP 40,000/- in the form of INR to his Banker in India. It is therefore, mistake, if any in this regard is committed by OP and not his Banker at U.K against whom complainant cannot raise consumer complaint. Thus, in such view of the matter, the findings recorded by the Commission below could not be maintained in appeal by the Commission, since the findings recorded by the Commission below solely relying on the ground that, OP is not authorized to deal with Foreign Accounts or to convert the funds, without considering the documents produced by the complainants. The complainant has shown the transactions converting foreign funds of the complainant into INR by OP, upon instructions from complainant, yet were not at considered by the Commission below, as such, such findings could not be maintained by this Commission. Even at the cost of repetition, we have to state, complainant has shown from documents issued by Bank of Scotland U.K that they are not at mistake and they confirmed about swift GBP transfer in such form and not in the form of INR, which would play a vital importance in this case.*”**

11. In view of the above such conclusion, the impugned order passed by the District Commission is held liable to be set aside. Accordingly the Appeal is allowed. Consequently, directed the OP to re-convert INR to GBP at the same rate as in the month of November-2011. Further, directed to keep such GBP as F.D, rather it being put into his S.B Account in Indian Rupees and pay interest thereon. Further, directed to pay Rs.1,00,000/- towards inconvenience mental agony and hardship caused all these years being a senior citizen and do pay Rs.50,000/- towards litigation expenses.”

9. Being aggrieved by the Impugned Order dated 30.03.2021 of the State Commission the OP Bank filed the instant Revision Petition No. 645 of 2022. Mainly advancing the following

issues:

- a. The Respondent intentionally withheld crucial information from the lower fora, including the fact that he had provided written consent to the Bank vide letter dated 11.10.2012.
- b. State Commission hastily passed the order without thorough examination of the facts and circumstances of the case. Further, the State Commission erred in not providing adequate and reasoned grounds for overturning the District Forum order.
- c. The State Commission failed to recognize that the Complaint is not maintainable, as the main contention is conversion of GBP into INR was explicitly instructed by him through a SWIFT Message sent by Llyods TSB Bank, PLC, UK dated 03.11.2011.
- d. Respondent's request for currency conversion was made clear in his letter dated 11.10.2012 seeking the bank to convert GBP into INR. However, this was deliberately concealed by him and came to light only in the present Revision Petition.
- e. The crucial letters explicitly state Respondent's oral instructions to convert GBP to INR and deposit it into his personal account. These not presented before lower fora. This omission is crucial.
- f. The impugned order directs the bank to reconvert INR into GBP at the same rate as in November 2011 and pay interest accordingly. However, as per Respondent letters, he requested INR in September or October 2012, negating interest payment.

10. Upon notice to the Complainant, a reply was filed wherein the Respondent refuted the allegations of the Petitioner and objected to the submission of new documents filed alongside the application for placing documents on record. The Petitioner filed IA No. 4798/2022 along with the Revision Petition, seeking to introduce alleged letters dated 11.10.2012 and 25.10.2012 at a belated stage. These were not part of the record before either the District Forum or the State Commission in the appeal. Consequently, they cannot be accepted at this late stage, as they represent his attempt to introduce new evidence and build a new case. Moreover, the letters in question are dated October 2012, while the case primarily relate to conversion of GBP to INR by Petitioner during November 2011. Therefore, both the Application and the Revision Petition are liable to be dismissed.

11. In his arguments, the learned Counsel for Petitioner reiterated the grounds of Revision Petition, arguing that as per the provisions of the FEMA Act/Regulations, neither the Bank nor the Respondent, who holds a Savings Bank Account, is authorized or empowered to retain foreign currency in a SB account. The only permissible modes for holding foreign exchange are either in a current account or in capital account. According to banking rules and practices, a Resident Indian can open and maintain a foreign currency account to retain foreign exchange acquired through various means, but an ordinary SB Account cannot be utilized for holding foreign exchange. ***Section 5 of The Foreign Exchange Management Act, 1999***, explicitly states that ***any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction***. He further argued that the Respondent alleged that the conversion of his GBP was done without his consent, leading him to file a consumer complaint before the learned District Forum, Mysore. However, the District Forum rejected the complaint citing jurisdictional issues and non-joinder of necessary parties, prompting the Respondent to appeal before the State

Commission. The State Commission set aside the District Forum order and directed the Revisionist to reconvert INR to GBP at the same rate as in November 2011. Moreover, it came to light that the Respondent had indeed provided a consent letter, but this was not disclosed in his pleadings before the lower courts. The Counsel contended that this intentional omission by the Respondent resulted in obtaining a favourable order from the State Commission.

12. Regarding the permission to file additional documents, the Petitioner has cited the full bench judgment of this Commission in R.P. No. 533 of 2019, wherein it was ruled that either party is entitled to present additional evidence in the Appeal/Revision Petition at any stage if such evidence, even after exercising due diligence, could not have been produced at the time when the Consumer Complaint was adjudicated. Moreover, the bank is not authorized to hold GBP currency in an INR Account as per FEMA regulations. Also, the Respondent himself had issued instructions to the bank to convert GBP into INR but concealed this fact at every forum to obtain the impugned order, which is legally flawed.

13. Learned Counsel for the Respondent / Complainant reiterated the facts of the case and highlighted the points raised in the reply affidavit. The Counsel argued that there is no infirmity or illegality in the State Commission's order, and therefore, the Revision Petition and IA No. 4798 of 2022 filed by the Petitioner to submit additional documents should be dismissed with significant costs.

14. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the parties.

15. The primary issues to be determined are whether the bank had the authority to convert GBP currency into INR and deposit it into the Complainant's SB account without his consent? Whether the Complainant had given instructions to the bank, which could affect the outcome of the case? Whether there is any deficiency in service rendered by the OP Bank?

16. The Petitioner had filed IA/4798/2022 seeking to bring on record the letters of the Complainant to the OP Bank dated 11.10.2012 and 25.10.2012, specifically requesting the Respondent Bank to credit GBP.40,000/- in his bank account in INR. While admission of these documents at the revision stage was objected to by the learned Counsel for the Respondent/Complainant, it is an established legal position in *Jiten K. Ajmera & Anr. Vs. Tejas Cooperative Housing Society*, (2019) 6 SCC 128 and in *Branch Manager Universal Sampo General Insurance Company Limited Vs. Didwaniya Exim Private Limited, RP/533/2019, decided on 21.05.2019* these two additional documents pertaining to the request of the Complainant to the Respondent Bank are considered material with respect to crediting of the transferred amount into his account.

17. It is undisputed that the Complainant had SB Account in OP Bank branch at Mysore. The Complainant was a NRI who served in UK for about 15 years, had an account in Bank of Scotland and was drawing Pension for his service in UK in that account. He wanted to transfer GBP 40,000 to his SB Account in OP Bank at Mysore. It is also undisputed that the Complainant had permission from Foreign Exchange Control Department of RBI for such remittances. At the same time, it is an established fact that the OP Bank did not have Foreign Exchange facilities at Mysore at that time. It is impermissible at OP Bank, Mysore Branch that time to convert currency from INR to GBP/Euros or GBP/Euros into INR. It is also not permissible for the Complainant to hold foreign currency in the SB Account held in the OP Bank and operated in INR. It is established position that the Complainant himself had requested for transfer of GBP 40,000 from his Account in Bank of Scotland and credit as INR into his SB Account at OP Bank, Mysore, which was actioned through Bangalore branch of Indian Bank.

18. It is also undisputed that entire GBP40,000/- was transferred into the SB Account of the Complainant at OP Bank, Mysore and there is no dispute in this regard. The contention of the Complainant is that this amount ought to have been retained in this account in the form of foreign currency - GBP. However, the Complainant at no stage had brought out as to under which rule/policy of the OP Branch of the Indian Bank he is entitled to retain such foreign currency in his SB Account in the OP bank operated in INR. The transfer of said funds and remittance in INR was done at his request. Therefore, the Complainant failed to establish any deficiency in service with respect to the service rendered to him by the OP Bank at Mysore.

19. Based on the discussion above, the impugned order passed by the learned State Commission in FA No. 954/2014 dated 30.03.2021 is set-aside and the order of the learned District Forum in CC No. 38/2013 dated 15.03.2014 is upheld. The Present Revision Petition No.645 of 2022 is, therefore, allowed.

20. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

21. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER