GOVERNMENT OF JAMMU & KASHMIR
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KUPWARA

Coram: -

1. Peerzada Qousar Hussain .... President

2. Ms Nyla Yaseen ...... Member

Consumer Complainant No: 33/C/2024

Nasir Ud Din Zargar R/o Sulkoot Kupwara.

.....(Complainant)

Versus

1. Al Nawaf Pharmaceutical Regipora Kupwara.
2. J&K Bank Old Chowk Kupwara.

...... (Opposite Parties)

Date of Institution: 10-02-2024
Date of Decision: 12-03-2026

Appearing Counsel: -
For the complainant: - In Person
For OP: - Advocate Zahoor Ahmed Wani

District Consumer Disputes Redressal Commission Kupwara

Judgement

The complaint in hand has been filed by the complainant before this commission on 10-02-2024 against the OPs alleging therein the illegal withdrawal of the loan amount sanctioned in his name under PMEGP Scheme; with prayer to grant the following relief: -

1. Direction to lodge an FIR against Al Nawaf Pharma and cancellation of drug license.
2. Direction to lodge an FIR against Old Chowk Bank employees and Managers and Cluster Office/Advance Section.
3. Impose penalty on Bank and Al Nawaf Pharma for causing extreme agony and huge loss to his business besides stern action for forcefully deducting huge amount from the guarantors.

Brief Facts: -

The complainant applied for loan under PMEG scheme for Rs 10 lacs through J&K Bank Branch Old Chowk Kupwara. The contention of the complainant is that an amount of Rs 10 lacs was sanctioned in his favour. He provided GST bill to the OP Bank for an amount of Rs 1.20 lacs which amount was disbursed in favour of the complainant, however the remaining amount was lying with the bank for which he neither approached the bank nor gave the consent for disbursement of the amount.

The complainant alleged that the OP Bank disbursed an amount of Rs 6.05 lacs to Al Nawaf Pharma, a third person, out of the sanctioned loan amount of Rs 10 lacs without his consent. The complainant further alleged that he approached multiple times to the OP Bank who assured him to return the amount and also assured that no instalments would be deducted from any of the guarantors' account however the assurances turned futile as they resorted to pressure by deducting huge amount from the guarantors' account. An amount of Rs 2 lacs was deducted from guarantors' account in alleged violation of RBI guidelines.

The contention of the complainant is further that he is paying the instalment and interest only from the amount lying with the bank and later withdrawn illegally. The amount withdrawn and disbursed in the name of Al Nawaf Pharma has no valid GST bill. The complainant approached

..he Cluster Head of the bank who without investigation provided him a copy of reply which was not only concocted and fabricated but full of a shield to cover up the illegality which constrained the complainant to approach the District Consumer Disputes Redressal Commission Kupwara for redressal of his grievances.

Notice was issued.
Upon notice OP Bank submitted the objections

OP Bank in the objection contended that the complaint is based on misleading and erroneous grounds. The allegations emanating from the complaint are quasi civil and quasi criminal. Some of the allegations have been directly attributed to persons by name and not in their official capacity .OP Bank further contended that the complaint has been filed just to stay the recovery of the pending loan amount. The OP further contended that the pharma distributor is holding a valid and effective GST and the relief as prayed for by the complainant cannot be awarded, as this Court cannot travel beyond the relief.

The complainant was sanctioned loan in the year 2021 after obtaining his consent. He was smoothly paying the instalments, however the complaint has been filed only to harass some Bank officials and to waste the precious time of this Court.

The complainant adduced four witnesses including three official witnesses namely Abdul Hamid Magray S/o Sona Ullah Magray R/o Keegam Check, Kupwara, Zainul Abdin Zargar S/o Ghulam Nabi Zargar R/o Sulkoot, Kupwara, Tasaduq Hussain Zargar S/o Ghulam Nabi Zargar R/o Sulkoot, Kupwara and Nasir Ul Din Zargar R/o Sulkoot, Kupwara, the complainant as witness in his own case.

Abdul Hamid Magray S/o Sona Ullah Magray R/o Keegam Check, Kupwara on cross-examination stated that he is a Diploma holder and knows about the procedure of loan. The complainant had formulated the documents of loan, but does not know about the loan availed. The witness stated that he does not know as to by whom the complainant suffered fraud. He has no relation with the complainant, however he used to work with him and was being paid salary. The witness further stated that the complaint is about the illegal deductions from his account in favour of Al Nawaf and the complainant sought refund of the deducted amount from his account.

Another witness of the complainant on cross-examination namely Zainul Abdin Zargar S/o Gulam Nabi Zargar R/o Sulkoot, Kupwara stated that he is a contractor by profession working since last 5 to 6 years. He has also availed loan and knows the steps to be followed for availing loan. The complainant had applied for loan of Rs. 10 lacs. He does not know Al Nawaf. The loan was disbursed in the year 2021. Some instalments were deposited by the complainant, thereafter dispute erupted and the instalments were deducted from the guarantors at times twice a month. It was a PMEGP loan and there is no requirement of obtaining permission from any higher authority for grant of loan. The witness further stated that it is true that the Bank credited an amount of Rs. 6,50,000/- in favour of Al Nawaf.

Another witness of the complainant namely Tasaduq Hussain Zargar S/o Ghulam Nabi Zargar R/o Sulkoot, Kupwara on cross-examination stated that he is a journalist by profession. It is correct that the amount was deducted from the guarantors, however he does not remember the date of deduction. The guarantors have not signed any documents. The borrower had introduced the guarantors with the Bank. No, it is not correct to say that an amount of Rs. 7 lacs were deducted from the account. The complainant used to receive the messages regarding the account. The loan was disbursed in the year 2021 (07/2021). The witness further stated that he knows Al Nawaf after the illegal transactions took place. Al Nawaf has not submitted any fraud bill in the Bank. The Bank showed them the bill of Rs. 6,80,000/- out of which Rs. 6,50,000/- was drawn from the account, however he does not know as to who made the bill and when the amount was credited in the account of Al Nawaf. The witness further stated that they approached the Bank immediately; earlier the Bank used to deduct the amount from the C.C. account of the complainant, but when the illegal transaction took place they informed the police. The police questioned a lot of people but did not lodge an FIR. The amount which was deducted from the complainant's account was credited in the account of Al Nawaf Pharmacy. He does not know about the GST of Al Nawaf because the bill submitted for an amount of Rs. 6,05,000/- does not mention the GST number. The complainant had filed complaint against Al Nawaf Pharma at Police Station. The President, Pharma Association assured them to take action in presence of Mr. Massodi and Mr. Farooq. The witness further stated that an amount of Rs. 4 lacs were deducted from the guarantors' account which raised some personal issues with guarantors.

Complainant namely Nasir Ul Din Zargar R/o Sulkoot, Kupwara as witness in his own case on cross-examination stated that he is a businessman by profession. He approached the Bank for availing loan of Rs. 10 lacs. He availed loan from the Bank and had no GST before availing the loan. He raised the issue of illegal deductions from the guarantors' account. The Bank Manager assured him the deposition of the deducted amount back in his account. The Bank credited the said amount in the account of Al Nawaf Pharma.

OP Bank adduced two witnesses namely Javeed Rashid Wani S/o Ab Rashid Wani R/o Drugmulla, Kupwara and Safdar Ahmad Pir S/o Mohd Asgar Pir R/o Bohipura, Kupwara.

Javeed Rashid Wani S/o Ab Rashid Wani R/o Drugmulla, Kupwara, the witness on cross-examination stated that he is working in J&K Bank presently posted at Old Chowk, Kupwara and has been working since last 7 years. He is dealing with the loan cases for about 5 years. The bill has been received from the complainant of the registered vendor. The loan amount was sanctioned for diagnostic lab. The witness stated that he cannot say as to whether the Bank officials inspected the spot or not. This is true that the amount remained with the Bank concerned but not with the individual official. The witness further stated that the Bank cannot entertain the bills which are not given for the proper item. The complainant is brother-in-law of one Showkat Ahmad Dar (Bank Employee) who was working in the same Bank during the period of disbursement of the loan to the complainant. The loan amount is being sanctioned by Appraising Officer, Advance I/C and Branch Head. Thereafter the documents are being processed and executed for disbursement. The witness further stated that the complainant must have submitted the proforma bills and inspection certificate at the time of application for loan. The loan amount is being recovered from the borrower on monthly instalment basis regularly.

Another witness of OP No. 1 namely Safdar Ahmad Pir S/o Mohd Asgar Pir R/o Bohipura, Kupwara on cross-examination stated that he is working in J&K Bank since last 14 years. He is working as Advance I/C. The subsidy is given by the Government and not by the Bank. The complainant's case is of PMEGP. The Bank received two bills from the complainant; out of two, one bill was of Al Nawaf Pharma, however he does not remember the name of the other bill. He does not even know whether the other bill has GST number or not. The bill received by the Bank does not have the GST number. As per RBI guidelines, the Bank has to receive the GST bills only from the borrowers. The witness further stated that he is not sure about the guarantors. The bill submitted by the borrower is genuine as per RBI guidelines. The bills which do not pertain to the items borrowed cannot be accepted by the Bank. He was not posted at the said branch at the time of disbursement of loan amount and cannot say whether the guidelines were followed or not. As per the records, the formalities have been completed before the disbursement of the loan amount to the complainant. An amount of Rs. 7 lacs have been disbursed in favour of the bill holder as the first instalment. The borrower is the owner of the subsidy which is the Government scheme. The applicant who applies for release of subsidy cannot apply for Government job unless there is NOC from the Bank.

Points for determinations

1. Whether the op bank committed deficiency in services by disbursing the loan amount to Al Nawaf Pharma without proper authorisation and consent of the complainant.
2. Whether charging EMI recovery for the full sanctioned amount despite partial disbursement to the complainant amounts to unfair trade practice.
3. Whether the complainant is entitled to reliefs claimed.

Findings

After perusal of the documents and evidences placed on record pragmatically this Commission is of the considered opinion that the loan amount of Rs. 10 lacs was sanctioned in favour of the complainant under PMEGP Scheme, which is not disputed; however, an amount of Rs. 1.20 lacs was only disbursed to the complainant. Additionally, no plausible documentary evidence has been produced by the OP Bank to substantiate that the written consent has been obtained from the complainant for releasing the remaining amount to another party viz. Al Nawaf Pharma. The OP Bank has acted negligently and arbitrarily in disbursing the loan amount without ensuring proper authorisation, besides the OP Bank has initiated recovery for the full amount without authorisation and consent.

Recovery proceedings against the full loan amount without lawful disbursement to the complainant, amounts to deficiency in service in accordance with Section 2(11) of CPA 2019.The borrower cannot be saddled with the liability for an amount which was neither received by him nor utilised for his benefit. Moreover, charging EMI and initiating recovery process against the entire amount is deficiency in service. Since, as a matter of fact, the contractual liability of the borrower arises only upon lawful disbursement of the loan in terms of the agreement.

The complainant is liable to the extent of Rs. 1.20 lacs only with applicable interest. The guarantor cannot also be held liable for the remaining amount of Rs. 6.05 lacs disbursed to another party. Because the disbursement of loan is subject to compliance with terms and conditions, fulfilment of scheme guidelines, and submission of documents and utilisation certificates.

Since the jurisdiction of the Consumer Commission is limited to grant remedies to the Consumer and cant adjudicate the criminal matters. As such the allegations of committing fraud cannot be conclusively determined in these summary proceedings, therefore the prayer part of the complaint seeking stern action is declined. The complainant is however at liberty to approach the appropriate forum for remedy.

In view of the above facts and circumstances, the complaint of the complainant is partly allowed and disposed of with the following directions: -

1. OP Bank is directed to conduct internal enquiry and take action against the responsible officials involved in disbursement of the loan in favour of another party viz Al Nawaf Pharma.
2. OP Bank is further directed to release the remaining amount to the complainant as per the laid-down procedure and strictly in accordance with the RBI guidelines.
3. OP Bank is further directed to refund the amount deducted from the guarantors along with the interest @ 5% from the date of deduction till the date of refund.

The OP Bank shall comply the order within a period of 30 days from the date of order.

Order announced
Date: 12-03-2026

12/03/26

Nyla Yaseen
Member

District Consumer Disputes Redressal Commission Kupwara

Peerzada Qousar Hussain
President

PRESIDENT
District Consumer Disputes Redressal Commission kupwara

Copy of this Order be provided to the parties for compliance and file be consigned to records after due completion.