IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 19.01.2015
Date of Hearing: 14.10.2024
Date of Decision: 18.11.2024

FIRST APPEAL NO.- 39/2015

IN THE MATTER OF

STATE BANK OF INDIA,
A BODY CORPORATE CONSTITUTED
UNDER STATE BANK OF INDIA,
ACT 1955 HAVING ITS CENTRAL OFFICE AT
MADAME CAMA ROAD, NARIMAN POINT,
MUMBAI–400021, AND ONE OF ITS
LOCAL HEAD OFFICE (S) & ZONAL OFFICE (S)
AT 11, PARLIAMENT STREET AND
ONE OF ITS BRANCH AT SWASTHYA VIHAR,
DELHI–110092.

(Through: Ms. Jaya Tomar, Advocate)

…Appellant

VERSUS

MR. VIKAS JAIN
S/O MR. KULDEEP KUMAR JAIN,
R/O H–145, RAMA KRISHNA VIHAR
29, I.P EXTENSION, PATPARGANJ,
NEW DELHI–110092.

(Through: Shreshtha Kumar, Advocate)

… Respondent

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Mr. Sarvagya Kashyap along with Jaya Tomar (email: sarvagyakashyap@gmail.com), counsel for the Appellant.
None for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are:

"This complaint has been filed with the allegation that the complainant was having Savings Bank Account No.30192407080 with the OP and ATM Debit Card No. 6620 1807 0850 0158 496 was issued. The complainant has activated his SMS information with respect to any transaction made in this account. In the month of September 2012 on 25.09.2012 and 26.09.2012 when the complainant was at Etah (UP) he noticed on 28.09.2012 that the following transactions in his bank account had taken place.

Date	*Transaction*	*Amount*
25.09.2012	*ATM cash WDL Shivaji Nagar, Bangalore*	*Rs. 20,000/-*
25.09.2012	*ATM cash WDL Shivaji Nagar, Bangalore*	*Rs. 20,000/-*
26.09.2012	*ATM cash WDL Sampan Girama Nagar, Bangalore*	*Rs. 20,000/-*
26.09.2012	*ATM cash WDL Sampan Girama*	*Rs. 20,000/-*

	Nagar, Bangalore	
	TOTAL	*Rs. 80,000/-*

From the above statement it is clear that sum of Rs. 80,000/- was withdrawn from the account through four transactions. The complainant had not received any SMS from the OP bank with regard to the transactions which took place in Bangalore. The complainant immediately called Customer Care and Complaint No.CD70856418358 was registered and he asked the OP Bank to block the ATM card immediately. He was surprised to note that when the ATM card was with him and PIN number was within his knowledge, how one can withdraw the amount from his account. Further, he has never visited Bangalore. The ATM card and PIN No. was in his custody. On 03.10.2012 when he came back from Etah (UP) he met the Chief Manager, Sh. D.D. Sharma and apprised him of the incident and lodged a written complaint with the OP vide Complaint No. AT 70856451614, AT 70856451681, AT 42926451772 and AT 42926451821. The complainant lodged another complaint on 11.10.2012 vide no. AT 42926526785 $ AT 42926526745. On 15.12.2012 surprisingly complainant received refund of Rs. 40,000/- (Rs. 20,000/- + Rs. 20,000/-) from the OP bank which were credited to his account each on 26.09.2012. This time also no SMS alert was received. On 18.10.2012 the aforesaid amount Rs. 40,000/- was taken back from the complainant account by way of reverse entry. This time also no SMS information was given. The complainant lodged complaint with Delhi Police, Cyber Crime Cell on 29.10.2012. He also lodged complaint with Channel Manger, State Bank of India on 13.12.2012. The OP has admitted that SMS have not been generated with regard to those four transactions. A complaint was also lodged with the Commissioner of Police, Bangalore. The OP have not made any proper enquiry. It is under these circumstances, the complainant has prayed for the refund of Rs. 80,000/- along *with interest @18% p.a., compensation of Rs.1,00,000/- and Rs.25,000/- towards the cost of his litigation."*

2. The District Commission after taking into consideration the material available on record passed the order dated **16.04.2014**, whereby it held as under:

> *"Heard the Ld. Counsel for the parties and perused the record. It is argued on behalf of the complainant that in respect of the fraudulent transactions at ATMs there is an importance of a video footage in the circular of Reserve bank of India pointing in their Annual Report on Banking Ombudsman Scheme 2010-2011 dated 24.02.2012 through which the banks were advised to preserve the camera footage and submit all the documentary evidences relating to the transactions. They have also mentioned that in the absence of the SMS alert facility a person had succeeded in withdrawing almost Rs. 40,000/- every day using a number of credit cards. The complainant of this case have specifically pleaded that on the date when the alleged transactions were made i.e. on 25.09.2012 and 26.09.2012 he was at Etah (U.P.). It is argued on behalf of the complainant that the bank could have specifically denied the allegations of the complainant that he has never used the ATM cards at Bangalore by producing before this court the camera footage of the ATM showing that the alleged transactions were actually made by the complainant and not be any other individual. The copy of the CCTV footage which has been filed by the bank was placed before this Forum on 20.02.2014 in the presnece of the complainant and parties Counsel. On viewing it, it was observed that the person who had carried out the transaction at ATM was found wearing a cap, his face was not clear this confirms the fact that complainant has never operated the card at Bangalore for the alleged transactions.*
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> *It is an admitted fact that the SMS regarding the alleged transactions were never delivered to the complainant who was present on the fateful day at Etah (U.P.). It is for the OP to prove that Etah (U.P.) has no network. Complainant has stated on oath that he was in possession of his mobile telephone and*

it was well connected with the network. The complainant since has paid for the services regarding the SMS alert and the same was not provided by the OP bank. Secondly, their CCTV footage placed at the concerned ATM was not in a position to record the clear face of the person who was operating the ATM. This is also a case of deficiency. The bonafide of the complainant can be judged from this fact that he immediately took action and requested for blocking of the ATM card. He filed complaint immediately with the bank and the Cyber Crime Cell of the Delhi Police. He also informed the Commissioner of Police at Bangalore. All these action on his part shows that these transactions are being carried out by some unscrupulous person who have either cloned the card or have mastered the art of tracking the confidential PIN number. If the bank is not upgrading the system and allowing it to be hacked it is also an act of deficiency on the part of the bank. In the present case this is an admitted fact that two transactions of Rs.40,000/- were reverted back on the complaint of the complainant which were specifically withdrawn on the report of the State Bank of Mysore from whose ATM the complainant had withdrawn this amount.

Taking all the facts and circumstances into consideration we allow this complaint. We direct, the OP bank to revert back to the complainant a sum of Rs. 80,000/- with interest @6% p.a. thereon from the date of filing of this complaint till the said amount is transferred into the account of the complainant. We are not making any order as to compensation but OP shall pay to the complainant a sum of Rs. 10,000/- towards the cost of this litigation."

3. Aggrieved by the order passed by the District Commission, the Appellant has preferred the present appeal, contending that the District Commission erroneously held the Appellant liable for deficiency of service based solely on the Respondent's claim of not receiving an SMS alert from the Appellant bank. The District Commission further held that there was a deficiency in service on the part of the Appellant, as the CCTV footage at the concerned ATM was not positioned to capture the face of the individual operating the ATM.

However, the District Commission also noted that the person operating the ATM was not the Respondent. Additionally, the District Commission found that the Appellant bank failed to upgrade its system, thereby rendering it susceptible to hacking.

4. The Appellant submits that it is implausible for any individual to have withdrawn the amount in question, as the ATM card was in the possession of the Respondent, and the PIN was known only to the Respondent. The Appellant further argues that the District Commission erred in failing to consider the SMS generated by the ATM Switch Centre in Mumbai, which clearly shows that all SMS alerts for the transactions were duly generated and sent to the Respondent. Pressing the aforesaid submissions, the Appellant prayed for setting aside the order of the District Commission.
5. The Respondent has filed a reply to the present appeal, denying all the allegations made by the Appellant. The Respondent submits that there is no error in the impugned order, as the Respondent has never visited Bangalore. Furthermore, the Respondent asserts that although the SMS alert facility was activated, no SMS alerts were received from the Appellant regarding any transactions that took place in Bangalore. The Respondent contends that had such alerts been generated, the fraudulent transaction could have been averted or minimized. Additionally, the Respondent points out that an amount of Rs. 40,000/- was credited to the Respondent’s account, yet no SMS alert was generated for this transaction either. Pressing the aforesaid submission, the counsel for the Respondent prayed for the dismissal of the present Appeal.
6. We have perused the Appeal, Reply of the Respondents, the Impugned Order and the judgement of the Hon’ble Supreme Court in ***Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC)***.
7. The main question for consideration before us is ***whether the District Commission was right in holding the deficiency of service on the part of the***

Appellant by directing them to refund a lumpsum amount of Rs. 80,000/- alongwith Rs. 10,000/- towards litigation cost to the Respondent.

8. A perusal of the record reveals that the Appellant’s contention—that the Respondent was present in Bangalore and made the disputed transactions does not hold water. The Respondent has consistently stated that he has never been to Bangalore, and this claim is further corroborated by the fact that an amount of Rs. 40,000/- was later credited to the Respondent’s account. This strongly suggests that the Respondent could not have been the person behind the said transactions. It is apparent that someone had cloned the ATM card and PIN for unauthorized transactions, and as such, the Respondent cannot be held liable for the same.

9. Furthermore, the Appellant’s argument that an SMS was generated from the ATM Switch Centre in Mumbai does not equate to the Respondent actually receiving such an SMS on his mobile phone. The mere generation of an SMS does not guarantee that it was delivered to the intended recipient, and there is no evidence to suggest that the Respondent received the SMS alerts for the disputed transactions. Therefore, the failure to send or deliver the alerts cannot be excused by the Appellant’s claim of having generated the SMS from their system.

10. Banks have a legal obligation to ensure the security of their customers' accounts, including providing timely alerts for withdrawals and other activities that could raise concerns regarding fraud or unauthorized transactions. If the SMS alert facility was activated and there was a failure on the Appellant's part to send those alerts, it could be seen as a failure in fulfilling the contractual obligation to keep the customer informed, especially in a case involving potentially fraudulent activity. The failure to provide timely alerts could lead to financial loss that the bank is liable for, especially if it can be shown that the fraud would have been detected earlier had the alerts been sent.

11. Regarding the Appellant's contention about an inconsistency in the Impugned Order of the District Commission, specifically regarding the visibility of the person in the CCTV footage, it must be noted that while the CCTV footage did not clearly show the face of the person, the District Commission also ruled that the person in question was not the Respondent. The fact that the individual in the CCTV footage was not clearly identifiable, combined with the Respondent's assertion that they were not in Bangalore at the time of the transaction, supports the conclusion that the Respondent was not the person operating the ATM. The Appellant's argument about the person wearing a cap and the face not being properly visible can coexist with the Respondent's position, which is that it was the Appellant's failure to secure the ATM system and properly monitor the transactions that led to the unauthorized access to the Respondent's account. The Appellant bank must be held liable for the deficiency of service and any consequences arising therefrom.
12. In light of the above analysis, the District Commission's findings appear to be substantiated by the evidence, and the Appellant's arguments fail to sufficiently disprove the Respondent's claims. The Appellant is liable for the deficiency in service, and the order directing them to refund the amount along with litigation costs is likely correct.
13. From the above discussion, we find no infirmity in the order dated 28.05.2014. Consequently, we are in agreement with the reasons given by the District Commission and fail to find any cause or reasons to reverse the findings of the District Commission. Therefore, we ***uphold the order dated 28.05.2014 passed by the District Consumer Disputes Redressal Forum (East), Govt. of NCT of Delhi, Convenient Shopping Centre, Saini Enclave, New Delhi–110092.***
14. Resultantly, ***the present Appeal stands dismissed*** with no order as to costs.
15. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

16. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
17. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:

18.11.2024

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