

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
BIHAR, PATNA
FINAL ORDER**

**First Appeal No. A/41/2022
(Date of Filing : 19 May 2022)
(Arisen out of Order Dated in Case No. of District State Commission)**

1. The Branch Manager, State Bank of India & Ors
Ganesh Cinema Road, PO- Hajipur, District- Vaishali- 844101Appellant(s)
Versus

1. Shiv Chandra Kumar
Son of Sri Ram Brichh Singh, Resident of Village & PO-
Balatand, PS- Bidupur, District- VaishaliRespondent(s)

BEFORE:

**MISS GITA VERMA PRESIDING MEMBER
MD. SHAMIM AKHTAR JUDICIAL MEMBER**

PRESENT:

Dated : 02 May 2024

**Final Order / Judgement
ORDER**

Per : Md. Shamim Akhtar, Member

Dated- 02.05.2024

1. The Appellants have filed the appeal against the order dated 08.03.2022 passed in complaint case no- 32/2016 by the Learned District Consumer Forum, Vaishali whereby and where under the appellants have been directed to pay Rs. 40,000/- (Rupees forty thousand only) with interest @ 4% p.a. which was deducted from the account of the complainant and also to pay Rs. 10,000/- and Rs. 5,000/- only towards mental agony and cost of litigation respectively to the complainant within 60 days from the date of the receipt of the order failing which the aforesaid amount will be payable with interest @ 9% p.a.
2. The case of the Respondent-complainant in brief as stated in the petition of complaint is that the complainant has a savings account no.- 33646987258 in the State Bank of India, Branch, Hajipur with ATM facility. Further case is that he used his ATM Card on 20.09.2015 at Chaksikandar ATM ID no.- GFBU000088038 of State Bank of India at 12.12 Pm. and got knowledge that the balance in his account is Rs. 1,25,898/ and the complainant used his ATM Card with his confidential PIN but the ATM failed to activate and thereafter the complainant went to Bidupur Station and Used ATM ID- GFBU000088024 on the same day i.e. 20.09.2015 at 12.25 P.M. but the machine indicated "Sorry unable to process". Then the complainant again tried at 13.09 Pm. and the balance shown was Rs. 85,898/- .Further case is that the complainant again tried at 13.10 P.M. on

20.09.2015 but due to the defective machine Rs. 40,000/- was deducted and thus the complainant suffered loss of Rs. 40,000/-. The complainant made contact from the Hajipur Branch but no response was taken by the Branch Manager. Further case is that on 16.10.2015 the complainant sent a registered letter but no action has been taken by the Branch Manager and on 08.02.2016 a legal notice was also sent by registered post but no reply was given and hence the complaint.

3. The Branch Manager, State Bank of India, Hajipur (O.P. no-1) appeared and filed his written statement in which he denied and disputed the claim of the complainant. The case of the O.P. no-1 in brief as stated in the written statement is that as a matter of fact the complainant visited the State Bank of India ATM at Chaksikandarpur where two ATM bearing code no.- GFBU000088038 and GFBU000088017 are working in a single room. After enquiry it was found by the Bank officials that the complainant started transaction on 20.09.2015 at 12.10.25 with ATM code no.- GFBU000088038 and the transaction ended at 12.12.27 but he did not get the money due to technical fault but on 20.09.2015 itself at 12.14.47, the complainant started transaction with another ATM bearing code no.- GFBU000088017 which was situated in the same room for Rs. 40,000/- and he succeeded to get the money at 12.15.49. Further case is that from the verification of cash statement of ATM bearing no.- GFBU000088017 no any excess cash was found on 20.09.2015 and thus it is clear that the complainant got the money from the ATM and he falsely stated a story of nonpayment of the withdrawal amount. Further case is that the complainant got his money from the ATM Machine which is completely working with computer software and no any person is involved in the matter and therefore there is no question of deficiency committed by any person/Bank officials. Prayer is made to dismiss the case.
4. After hearing both the sides the Learned District Commission passed the impugned order.
5. Being aggrieved and dissatisfied with the impugned order the appellants have filed the present appeal mainly on the grounds that the impugned order is bad in law as well as on facts and the Learned District Commission ignored the material fact that any transaction made by ATM after using the four digit PIN is within the knowledge of the complainant only and hence the allegation of illegal withdrawal is far away from the truth. Further ground is that the Learned District Commission failed to consider the fact that card and PIN are within the custody of the complainant and admittedly he operated the ATM and it is evident from E.J. log and the impugned order has got no merit and is fit to be set aside.
6. We have heard the learned counsels for both the sides. Also perused the records including the written notes of argument filed by the parties.
7. The case of the complainant as per the petition of complaint is that on 20.09.2015 at Chaksikandar ATM ID no.- GFBU000088038 of the State Bank of India at 12.12.P.M. he used his ATM Cards and came to know that the balance in his account is Rs. 1,25,898/- and thereafter the complainant endorsed his ATM confidential No. but unfortunately ATM Machine failed to activate. Thereafter, the complainant went to Bidupur Station and used ATM ID no. - GFBU000088024 on the same day i.e. 20.09.2015 at 12.25 P.M. and the ATM Machine responded as "Sorry unable to process" and thereafter the complainant again tried at 13.09 P.M. On the same day i.e. 20.09.2015 and then the ATM Machine shown the balance as Rs. 85,898/-. According to the complainant he again tried at 13.10 P.M. on 20.09.2015 but due to the defective machine his Rs. 40,000/- has been deducted from his account and thereby the complainant was put on loss of Rs. 40,000/-.

8. On the other hand the O.P. no-1(SBI, Hajipur Branch) in its written statement says that on the relevant date the complainant visited the SBI ATM at Chaksikandar where two ATM bearing code no.- GFBU000088038 and GFBU000088017 were working in a single room and after enquiry it was found that the complainant on 20.09.2015 at 12.10.25 used the ATM bearing code no.- GFBU000088038 and the transaction ended at 12.12.2017 but he did not get the money and it is admitted by both the sides. According to the complainant thereafter he went to Bidupur Station and used ATM ID GFBU000088024 on the same day at 12.25 P.M. and also tried at 13.09 P.M. and also at 13.10 P.M. and his balance in the account was shown at Rs. 85898/- and thus his Rs. 40,000/- was deducted by the defective machine. The O.P. no-1 (SBI Branch Hajipur) in its written statement says that at Chaksikandar there are two ATMs of the Bank and on 20.09.2015 itself at 12.14.17 the complainant made transaction with another ATM Code no.- GFBU000088017 which is situated in the same room and he succeeded in withdrawal of money of Rs. 40,000/- at 12.15.49. But the complainant in his complaint petition has concealed the fact that there are two ATM Machine in the same room at Chaksikandar. The complainant in his petition of complaint has not explained as to why he did not use the another ATM bearing code no.- GFBU000088017 kept in the same room rather he proceeded to Bidupur Station and used ATM ID no.- GFBU000088024. The xerox copy of the relevant page of the Passbook of the Bank relating to the complainant which is filed at page no- 21 of the paper book, shows that on the relevant date Rs. 40,000/- was withdrawn from the ATM situated at Chaksikandar itself.
9. Thus in the light of the above discussions of the materials available on the records, we find that the case of the complainant as stated in the petition of complaint does not inspire confidence. The impugned order is thus requires interference. We therefore set aside the impugned order dated 08.03.2022 passed in complaint case no.- 32 of 2016 passed by the Learned District Commission, Vaishali, Hajipur. The appeal is **allowed**. No costs.
10. A copy of this order be supplied to both the parties free of cost as mandated by the Consumer Protection Act, 2019. The order be uploaded forthwith on the confonet of the State Commission.

Let the file be consigned in the record room along with copy of this order.

(Md. Shamim Akhtar)

(Gita Verma)

Jud. Member

Jud. Member

Anita

[MISS GITA VERMA]
PRESIDING MEMBER

[MD. SHAMIM AKHTAR]

