

Latest HLJ 2025 (HP)(1) 120

Himachal Pradesh State Consumer Disputes Redressal Commission Shimla.

First Appeal No. 10/2023

Consumer Protection Act, 1986–Section 2–Section 226(3) of the Income Tax Act, 1961–Deficiency in service and unfair trade practice–Tax recovery notice–Banking Services–Unilateral Encashment of Fixed Deposit–Non-Restoration of Accounts–Complainant (FD) of Rs.2,72,745/- was prematurely encashed by the bank without his consent and after adjusting an amount towards an OD loan, the bank remitted Rs. 2,14,459.61/- to the Tax Recovery Officer–Complaint allowed–Appeal– Held–That, the banks cannot unilaterally encash a Fixed Deposit without the account holder's consent bank and liable for wrongful encashment and non-restoration of accounts despite the tax attachment being vacated–Failure to restore accounts after the tax demand was set aside, amounts to deficiency in service–Appeal dismissed with costs of Rs. 50,000/- payable to the complainant. (Paras 18 and 19)

Parties represented by:

For the Appellants: Ms.Jyoti Chauhan, Advocate vice Mr.Sanjay Dalmia, Advocate. For the Respondent: In person.

Justice Inder Singh Mehta, President O R D E R :- Present appeal is preferred against the order dated 09.12.2022 passed by learned District Commission, Shimla, in consumer complaint No.257/2018 titled S.S. Kaushal Vs UCO Bank & Anr., whereby complaint filed by the complainant was allowed and the opposite parties were directed to restore the Saving FD/OD/CC accounts of the complainant and further directed to refund jointly and severally a sum of Rs.2,14,459.61 to complainant alongwith interest @ 9% per annum from the date of filing of complaint till its actual payment, besides compensation of Rs.25,000/- and litigation costs of Rs.20,000/-.

Brief facts of the Case:

2. Brief facts of the case are that complainant was having saving and FD/OD/CC accounts with the opposite party No.1/Bank and was operating the same w.e.f. 2009 onwards. The complainant had F.D. Account with the opposite party No.1/Bank and the same had been automatically invested by the system of Bank on 08.05.2017 for 444 days for an amount of Rs.2,72,745/-. The opposite parties/Bank without the knowledge of the complainant encashed the said FD of the complainant premature and after adjusting some amount in OD loan, remitted the balance amount of Rs.2,14,459/- to the Tax Recovery Officer, Shimla by way of Demand Draft. When the complainant came to know about the said act of the opposite parties/Bank, he immediately made a representation to the opposite parties/Bank and in reply the opposite parties referred a demand letter from the Tax Recovery Officer, Shimla. In appeal filed by the complainant, no demand is determined and letter of Tax Recovery Officer was null and void and unwarranted and the opposite parties acted in haste to incur loss and damage to the complainant by encashing the FD prematurely. The complainant issued legal notice to the opposite parties, but the reply was not satisfactory. Despite many requests and representations,

the opposite parties have neither restored the accounts in question nor refunded the amount to the complainant, which amounts to deficiency in service and unfair trade practice on the part of the opposite parties/Bank. Hence, the present complaint.

3. The opposite parties/Bank contested the complaint by filing reply and stated that the opposite parties/Bank received a notice from Sh.Pradeep Singh, Tax Recovery Officer, Income Tax Department, Shimla, whereby the opposite parties/Bank were directed to remit the quoted amount as demanded under Section 225 of Income Tax Act, 1961. In compliance of the said notice, the amount of FD of complainant was prematurely encashed and was remitted in the account of Tax Recovery Officer, Shimla. The Opposite party No.2/Sr. Manager has acted in compliance of the notice of the Tax Recovery Officer and has remitted the arrear of the tax in the account of Income Tax Department. The opposite parties have remitted the quoted amount as demanded by the Tax Recovery Officer, which is prior to the appeal filed by the complainant against the order of the Tax Recovery Officer. The opposite parties/Bank are duty bound to remit the amount since there was no stay order of the demand notice issued by the Income Tax Department. The opposite party No.2/Sr.Manager informed the complainant that the amount demanded by the Tax Recovery Officer in the demand notice has been remitted into the account of the Income Tax Department. There is neither any deficiency in

service nor any unfair trade practice on the part of the opposite parties. A prayer for dismissal of complaint was made.

4. The complainant has filed rejoinder denying the contents of the reply filed by opposite parties and reiterating those of complaint.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing learned counsel for the parties, learned District Commission below allowed the complaint of the complainant.

7. Feeling aggrieved by the order of learned District Commission, the appellants/opposite parties have preferred the instant appeal before this Commission.

8. Arguments heard on behalf of the parties and perused the written submissions filed on behalf of the respondent/complainant and record of the case carefully.

9. Learned counsel of the appellant/bank has submitted that the only question to be determined in the present case is that the notice issued by the Income Tax Officer is mandatory for the bank or it is obligatory. He further submitted that it is an admitted case of the respondent/complainant that he had committed some default in his tax assessment and accordingly Assessing Officer of the Income Tax has issued notice dated 21.06.2017 and in pursuance of the said notice appellants/bank have complied with the order and issued notice to the respondent/complainant. He further submitted that appellant/bank has also written to the Income Tax Authority and reply to that authority is also received from the Income Tax Authority dated 19.01.2023. He has also filed letter dated 01.07.2017 and referred Section 226(3) (i) of the Income Tax Act, 1961 and prays that appeal of the appellant be allowed.

10. Respondent Mr.S.S. Kaushal present in person has submitted that the appellants/bank have operated the account of the respondent/complainant without the consent of the complainant and had encashed the FD prematurely which is bad in law. He further submitted that appellants/bank slashed away the entire amount and closed the account of the respondent/complainant without his consent which is against the law. He further submitted that the impugned order does not require any interference and prays that appeal of the appellants/Bank be dismissed.

FINDINGS

11. The admitted fact emerging on record is that complainant was having saving and FD/OD/CC accounts with the opposite party No.1/Bank and was operating the same w.e.f. 2009 onwards.

12. It is also an admitted fact emerging on record that the complainant was holding F.D. Account with the opposite party/Bank amounting to Rs.2,72,745/- invested for 444 days.

13. The plea of the complainant is that the opposite parties/Bank without his knowledge encashed the said FD of the complainant prematurely and after adjusting some amount in OD loan, remitted the balance amount of Rs.2,14,459/- to the Tax Recovery Officer, Shimla by way of Demand Draft.

14. Per contra, version of the opposite parties/Bank is that there is no deficiency in service on their part as they have acted as per law in view of the notice received from the Tax Recovery Officer.

15. Perusal of the record indicates that vide letter dated 01.07.2017, the opposite parties/Bank sent demand draft of Rs.2,14,459.61 to the Tax Recovery Officer from the FD of the complainant in compliance to the notice issued under Section 226(3) of the Income Tax Act.

16. Perusal of the record further indicates that complainant has filed appeal before the Income Tax Authority, which was allowed and the Principal Commissioner of Income Tax, Shimla vide letter dated 25.08.2017 directed the Tax Recovery Officer, Shimla to vacate all the bank accounts of the complainant . Relevant portion of letter dated 25.08.2017 is reproduced as under:- " Since the appeal filed by the assessee is allowed inasmuch as the same is set aside de novo to be decided afresh by the CIT(A) after giving adequate opportunity to the assessee of being heard, therefore, no demand exist to be recovered from the assessee, hence, you are directed to vacate the attachment of all the bank accounts as required by the assessee with immediate effect and under intimation to this office by 31.08.2017 positively."

17. Thereafter, the opposite party No.2/Sr. Manager of Bank wrote letters dated 15.09.2017, 21.11.2017 and 16.02.2018 requesting the Income Tax Authority/Tax Recovery Officer to arrange to send/refund back the amount of Rs.2,14,459.61.

18. There is nothing on record that the opposite parties/Bank have issued any notice to the complainant when the FD was encashed prematurely and amount of Rs.2,14,459.61 was

remitted to the Tax Recovery Officer.

19. When the order of attachment was set aside and there existed no demand outstanding against the complainant on behalf of the Income Tax Authority, even thereafter, the opposite parties/Bank did not make the accounts of the complainant operative and have also not refunded the amount to the complainant despite many requests of the complainant in this regard. Thereafter, the complainant was forced to file the consumer complaint before the learned District Commission below on 07.09.2018, which was decided on 09.12.2022. Grievance of the complainant, who is Sr.Citizen was not redressed by appellants/Bank even after the passing of the impugned order dated 09.12.2022.

Rather, the appellants preferred the instant appeal before this Commission on 12.01.2023 .

20. In view of the aforesaid discussion, this Commission does not find any infirmity in the order passed by learned District Commission below and as such same does not require any interference.

21. Consequently, appeal of the appellants/Bank and Erring Official fails and same is hereby dismissed with costs of Rs.50,000/- (Fifty thousand) to be paid to the complainant and the impugned order passed by learned District Commission below remains upheld.

22. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.