

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9352 OF 2019
(Arising out of SLP(C) No.3738 of 2019)

DAV Public School

Appellant (s)

Versus

The Senior Manager, Indian Bank,
Midnapur Branch & Ors.

Respondent (s)

JUDGMENT

Hrishikesh Roy, J.

1. The challenge in this appeal is to the final judgment and order dated 24.4.2018 in the First Appeal¹ whereunder the National Consumer Disputes Redressal Commission² dismissed the appeal of the appellant and upheld the order passed by the State Consumer Disputes Redressal Commission, West Bengal³. Under the impugned judgment, the liability of the respondent Indian Bank was limited

¹ First Appeal No. 386 of 2018

² "NCDRC"

³ The State Commission

to Rs 1,00,000/- although the complainant suffered total loss of Rs 30,00,000/-, from their Bank Accounts and sought return of the lost sum.

2.1 The complaint of the Principal of the DAV Public School⁴ alleged deficiency of service against *the respondent Bank* inasmuch as the School's bank accounts without net banking facility, was linked with the personal Customer Information File (CIF) of the Principal of the School, facilitating online transaction which led to siphoning of Rs 30,00,000/- (Rupees Thirty Lakhs), from the school's account.

2.2 The complaint mentioned that the DAV Public School, Paschim Medinipur maintained three accounts with the Indian Bank, Midnapur Branch in District Paschim Medinipur, West Bengal namely, i) the School General Fund Account - A/c No. 553624984; ii) School Pupils Fund Account - A/c No. 553625423 and iii) School Interest Account - A/c No. 933045930. While the Withdrawal from the first two accounts could be made through cheques under joint signature of the Principal, DAV Public School, Midnapore and Managers/Principal, DAV Model

⁴ The School

School, IIT Kharagpur, the third referred account was authorised to be operated by the Principal of the DAV Public School, under his own signature. It was the specific case of the complainant that the school never approached *the Bank* for net banking facility for any of their three accounts, but on 2.9.2014 when the Principal opened his personal savings account (distinct from the school accounts) for the purpose of transferring money through net banking, he learnt that the three accounts of the school got tagged with his personal savings account. As the school Principal was required to go on an urgent official tour, he decided to report the matter to *the Bank* after his return from the official tour.

2.3 On 7.9.2014, one of the school employees was sent to *the Bank* for updating the passbook but the passbook couldn't be updated for technical reason as informed by the bank's staff. Again on 9.9.2014 the School employee went to the bank for updating the passbook and it was then detected that Rs. 25,00,000/- (Rupees Twenty Five Lakhs) was unauthorizedly transferred from the school's account. This was brought to the notice of *the Bank's* manager on 9.9.2014, but *the Bank Manager* advised the concerned school staff to visit *the Bank* on the next day

morning. But by the time the account could be blocked, another sum of Rs. 5,00,000/- (Rupees Five Lakhs) got transferred from the school's account.

2.4 It was also mentioned by the complainant that the mobile phone sim of the complainant was blocked on 5.9.2014 and subsequently the complainant learnt that a duplicate sim card was issued against his mobile number and his phone bill was paid by somebody even before the normal bill could be generated on 8.9.2014. With this information, the complainant demanded return of the siphoned sum with interest in the school's bank account.

3. *The Bank* contested the case before *the State Commission*. They acknowledged that the school did not apply for net banking facility but inadvertently the personal CIF of the then Principal of the School got tagged with the school's accounts which facilitated the online transfer of school's money.

4. The BSNL Authorities who were arrayed as respondent Nos. 4 and 5 in the Complaint before *the State Commission* pleaded that the then Principal on his way back from Howrah to Kharagpur lost his mobile phone with the BSNL post paid sim No. 9434340725 for which, diary was lodged on 4.9.2014 at the Kharagpur GRP as GRPs No. 1091.

Thereafter, the Principal applied for duplicate sim which was issued after completion of necessary formalities. Subsequently, request was made to the BSNL to port out the said phone number and accordingly, the sim card was ported out from BSNL to another service provider i.e. Bharti Airtel. But most curiously, the transfer was made not in the name of the registered phone subscriber Sanjiva Kumar Sinha, but in the name of one *Sanjay Kumar Sinha* who purportedly resided in the same address.

5.1 *The State Commission* after noting the rival contentions recorded that admittedly the complainant school did not opt for net banking facility in respect of any of their three accounts. Thus, gross error on the part of *the Bank* was found in the siphoning of the money from the school's account and accordingly, it was concluded that "it was a clear case of gross deficiency on the part of the OP Bank". *The Commission* then considered whether the OP Bank should be made liable to make good the loss suffered by the Complainant. It was then observed that mere tagging of bank accounts with online banking facility is not enough to transfer fund through RTGS/NEFT, since access to the concerned bank accounts is through User ID, Login, Password, One Time

Password etc. Thus, complicity of the then Principal of the School in those internet transactions was suspected. *The Commission* also noted that the school Principal failed to inform the BSNL authorities and *the Bank* in due time and thus despite detecting the illegal transfer of the large sum i.e. Rs 25,00,000/-, the official complaint was not lodged on 9.9.2014 itself and this facilitated the transfer of another Rs. 5,00,000/-, from the school's account.

5.2 Thus, inference was drawn by *the State Commission* that either the then Principal of the complainant school was the mastermind behind all the fraudulent withdrawals or he compromised the user ID and login Password with others but, in either case, the School Principal cannot escape his personal liability and as a corollary thereof, the complainant cannot avoid their vicarious liability for acts and deeds of their employee. With these observations, while gross deficiency in service on the part of the OP Bank in safeguarding the money of the complainant school was noticed and they were held liable to pay compensation to the complainant, only partial relief was allowed by declaring that *the Bank* authorities (OP Nos. 1,2,3 and 6) shall be jointly and/or severally

be responsible for payment of Rs 1,00,000/- as compensation together with cost of Rs. 10,000/-, to the complainant. Aggrieved by the limited relief granted by *the State Commission* by its order dated 4.1.2018, the complainant approached *the NCDRC* through First Appeal No. 386 of 2018.

6. The Appellate forum referred to the facts noted by *the State Commission* and observed that it is not in dispute that the complainant school had not applied to *the Bank* for providing internet banking facility for their accounts and therefore, it was a mistake on the part of *the Bank* to tag the school's account with the personal account of Sanjiva Kumar Sinha the Principal of the School. *The NCDRC* also adverted as to whether the transactions could have taken place either with connivance or gross negligence on the part of Sanjiva Kumar Sinha. It refused to accept the contention that some unscrupulous person obtained the duplicate sim of the mobile phone of Sanjiva Kumar Sinha and then obtained user ID, login and the transaction password, using the duplicate sim. The appellate forum also found it hard to accept that when the mobile phone of Sanjiva Kumar Sinha remained inactive for six days between 5.9.2014 to

10.9.2014, the subscriber assumed it was a network issue without suspicion of any wrong doing and did not inform the matter to the service provider. The fact that duplicate sim was issued by the BSNL authorities on compliance of necessary formalities and eventually mobile connection was transferred in the name of one *Sanjay (Kumar Sinha)* was treated to be another circumstance which allegedly indicated the involvement of Sanjiva Kumar Sinha in the fraudulent transaction. With these observations, *the NCDRC* concurred with the partial relief granted by *the State Commission* determining Rs. 1,00,000/-, as the compensation payable by *the Bank*. The appeal accordingly came to be dismissed on 24.4.2018 by *NCDRC*.

7. Assailing the above decision of the *NCDRC*, Mr. Surendra Nath, learned senior counsel appearing on behalf of the appellant would submit that when deficiency in service by *the Bank* was found by both *the State Commission* as also by *the NCDRC*, there is little justification for limiting the compensation to Rs. 1,00,000/- when the School suffered total loss of Rs. 30,00,000/-.

8. On the other hand, Mr. Dhruv Mehta, learned senior counsel appearing on behalf of *the Bank* submits that a formal complaint with *the Bank* was lodged only on the next day even after learning of the siphoning of Rs. 25,00,000/- from the school's account and this should be considered to be a contributory factor in the loss occasioned to the complainant. The learned senior counsel accordingly tries to justify the limiting of compensation to Rs. 1,00,000/-, by the forum.

9. Before proceeding any further with the matter, it is necessary for us to refer to the proceeding before the Banking Ombudsman on the complaint No. 201415005002580 lodged by S.K. Sinha, Principal, on behalf of DAV Public School against the respondent Bank. The Banking Ombudsman in their decision on 4.2.2015 (Annexure P-11) also noted that the Bank was at fault in linking the School's account with internet banking facility without request from the account holder and recorded as follows:-

"From the contentions of both the parties, I observe that there is fault of the bank as they have linked the school's account with internet banking facility without any request from the school authorities which caused the fraud. The case is under investigation by police whose outcome is not known. But as there is a limit of Rs.10 lakh for giving an award under the Banking

Ombudsman Scheme (BOS), 2006. I am not in a position to instruct the bank to pay the amount of Rs. 30 lakh. Hence, the complaint is closed under clause 13(b) of BOS, 2006 as it is outside the pecuniary limit of the BOS."

10. That apart, on the basis of the School's FIR, the Kotwali PS case No. 995/14 corresponding to GR No. 3246/14 was registered within the jurisdiction of the Chief Judicial Magistrate, Paschim Medinipur. The case was investigated by the police and chargesheet (Annexure P-20) was filed. The police referred to the allegations in the FIR and noted that the Senior Branch Manager of the concerned Branch of Indian Bank was requested to clarify how an account with only cheque facility can be operated with net banking process; secondly, how any institutional account can be linked with any personal account, without the request of the account holder and thirdly whether it is possible to make net transaction of the account, in such situation. The police noted that *the Bank* authority failed to convey their response until the filing of the charge sheet on 29.4.2018. The charge sheet also disclosed that charges have been framed against two persons i.e. i) Akash Saha @ Niraj Sharma @ Boby Dutta and ii) Aditya Narayan Kundu @ Rahul Bhattacharjee who siphoned of the money through a series

of illegal transactions. The charge sheet also revealed that there was no complicity on the part of the School Principal Sanjiva Kumar Sinha in the fraudulent transaction from the bank through the criminal acts of the two chargesheeted accused.

11. In the above backdrop, the key question to be considered here is whether, without the school's account being linked with net banking facility, any money from the bank account could have been siphoned out by the miscreants. The obvious answer to this question has to be in the negative. As concurrently found by *the State Commission*, the Banking Ombudsman and also by *the NCDRC*, the bank has rendered themselves liable by enabling net banking facility by linking the individual account of the school's Principal, to the school's account. The only reason why *the State Commission* as well as *the NCDRC* had limited the compensation sum to Rs. 1,00,000/- was because of the perceived complicity of the Principal. But the charge sheet filed by the police reveals how the fraudulent transaction was made by the two charge sheeted accused and more importantly the police did not find complicity of the Principal of the school, with those fraudulent transactions. The Banking Ombudsman too

declared that the Bank was at fault which facilitated the loss to the School but declined to order refund as the demanded sum (Rs 30,00,000/-) was beyond the pecuniary jurisdiction of the Banking Ombudsman.

12. Considering the above, the denial of the compensation corresponding to the extent of the School's loss, by *the State Commission* as well as by *the NCDRC* would not in our view, be justified. The question then is whether *the Bank* should be asked to compensate the school for the entire loss through such fraudulent transaction. In this context, it may be noticed that when the siphoning of a large sum of Rs. 25,00,000/- was first detected by the school staff, the official complaint was not lodged immediately and only on the next date, the complaint was filed with *the Bank* authorities. Whether *the Bank Manager* was verbally informed on the very date of detection or on the next day is an aspect which is difficult to conclude conclusively and therefore the subsequent siphoning of Rs. 5,00,000/- by the next day, may have been occasioned by the contributory negligence of the school authorities. But, insofar as the loss of Rs. 25,00,000/- is concerned, the complainant cannot be held responsible directly or even vicariously, either as an institution or the

Principal, as an individual. We are therefore of the view that the respondent Bank should be directed to compensate the School to the tune of Rs. 25,00,000/- transferred until 9.9.2014, when the misappropriation was first detected but not for the additional sum siphoned on the next date from the School's account. It is ordered so accordingly. The impugned orders are interfered to this extent. The appeal is allowed in these terms.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hrishikesh Roy]

New Delhi
December 18, 2019