

Advantage Consumer

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Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

The rate of interest charged by the banks, is determined by the financial wisdom & directives issued by the Reserve Bank of India and is duly communicated to the credit card holders from time to time, cannot be in any manner considered unfair and the Order of the NCDRC is set aside. (Shortened Judgment, for want of space, is reproduced below.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5273 OF 2008

HONGKONG AND SHANGHAI
BANKING CORP. LTD.

...APPELLANT(S)

VERSUS

AWAZ & ORS.

...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The captioned set of appeals arise out of the common Judgment & Order dated 07.07.2008 passed by the National Consumer Disputes Redressal Commission, Delhi (*hereinafter "National Commission/ NCDRC"*) in Complaint Case No. 51/2007 and Revision Petition No. 1913/2004. No appeal has been preferred from either of the parties, in the Revision Petition No. 1913/2004.

2. The National Commission proceeded with the *prima-facie* view that the charging of interest at rates ranging from 36% to 49% p.a. is exorbitant and amounts to the exploitation of the borrowers/debtors and is usurious, had framed the following issues:

- i. Whether the Reserve Bank of India (hereinafter referred to as RBI) is required to issue any circular or guidelines prohibiting the Banks/Non-Banking Financial Institutions/money lenders from charging interest above a specific rate?*
- ii. (a) Whether banks can charge the credit card users interest at rates from 36% to 49% per annum if there is any delay or default in payment within the time specified?*

(b) Whether interest at the above-stated rates amounts to charging usurious rates of interest?

3. The Appellants, Hong Kong Shanghai Corporation, Citibank, American Express Banking Corporation, Standard Chartered Bank, vide C.A. no. 5273/2008, C.A. No. 5294/2008, C.A. No. 5627/2008 and C.A. 5278/2008 respectively along with the Intervenor, Housing Development Finance Corporation (I.A. No. 6/2017) [hereinafter “Banks”] have challenged the correctness of the Impugned Order dated 07.07.2008, whereby the National Commission has held that the charging of interest at rates beyond 30% by the banks/non-banking financial institutions, from credit card holders, upon delay or default in payment, constitutes an unfair trade practice and that penal interest could be charged only once for one period of default and the same shall not be capitalized. The conclusive observation under challenge, passed by the National Commission is as under:

i. Charging of interest rates in excess of 30% p.a. from the credit card holders by banks for the former’s failure to make full payment on the due date or paying the minimum amount due, is an unfair trade practice. (ii) Penal interest can be charged only once for one period of default and shall not be capitalized. (iii) Charging of interest with monthly rests is also an unfair trade practice

4. The Appellants have contended that determining the reasonability and ‘fixing of the maximum or the minimum rates of interest’, is the exclusive function of the Respondent no.6, the Reserve Bank of India, a statutory authority responsible for the regulation of the Indian Banking system. The Appellants have assailed the observations of the National Commission, in light of the statutory bar under section 21A & 35A of the Banking Regulation Act, which expressly bars courts/tribunals to re-open transactions between banks, on the question that the rates of interest are excessive and empowers the Reserve Bank of India, to formulate directions, as befitting the public interest, proper management and banking policies of the country. The Appellants have urged that the encroachment of this statutory domain of the Reserve Bank of India, by the National Commission, is against the mandate of the Constitution and the legislative intent of the Reserve Bank of India Act, 1934. The Appellants have further contended that the original complaint by the Respondent nos. 13 not only fails to meet the criterion of a Complaint u/s 12 r/w 13 of the Consumer Protection Act, 1986, but is a public interest litigation, guised as a consumer dispute which could not have been entertained by the National Commission, being beyond its inherent jurisdiction.

5. The Respondents nos. 1 to 3, the original Complainants [hereinafter “Complainants”] before the National Commission, have also preferred a cross-Appeal bearing CA. 6679/2008, against the Impugned Judgment dt. 07.07.2008 contending that the National Commission has only partly allowed their complaint, and ought to have adjudicated upon a benchmark restriction for the rates of interest charged by banks from credit card holders. It is contended that the rates of interest charged by the banks from its credit cardholders is usurious and exploitative in nature, and in contravention of the circulars issued by the Reserve Bank of India. The Complainants claim that they represent the public at large, as a voluntary consumer association voicing against the usurious rate of interest charged by the banks, which is a deficiency in service in banking and constitutes an unfair trade practice, in terms of the Consumer Protection Act, 1986. It is argued on behalf of the Complainants that there ought to have been a Notification passed by the Reserve Bank of India, fixing a maximum ceiling rate of interest for all banks, and in pursuance thereto had approached the National Commission by filing the Consumer Complaint no. 51 of 2007. It was prayed that the Appellant along with Respondent nos. 5, 6 & 7 be permanently restrained from charging excessive interest and service charges, *de-hors* the Prime Lending Rate, and the directions issued by the Reserve Bank of India. It was further prayed that all banks who have issued credit cards to Respondent no. 3 and members of the Respondent no.1 be directed to refund the amount of interest, claiming the same to be more than Rs. 5 crores.

SUBMISSIONS ON BEHALF OF BANKS

6. The Appellant, along with the Respondent nos. 5, 6 and 7 are foreign banks carrying on the business of banking in India under the provisions of the Banking Regulation Act, 1949 and are scheduled commercial Banks as notified by the Reserve Bank of India.

7. The Appellants submit that the allegations raised by the Complainant that the rate of interest, charged by banks from its credit card holders, constitutes an unfair trade practice, is erroneous. It is stated that the modus of adopting any unfair methods, or deceptive means to promote the sale, use or supply of any goods or for providing any service, is manifestly absent. The Banks assert that they have neither indulged in any unfair trade practice nor have done anything which would bring them within the mischief of Section 2(r)(l)(i) to 2(r)(l)(x).

8. Further, there are also no specific allegations raised by the Complainants or any materials on record, to elicit any unfair trade practices adopted by the Banks. The Counsel for the Appellant submits that the National Commission has barely acted on the assumption that banks are indulging in unfair trade practices. It is stated that there are no facts to suggest that any of the scheduled banks under the purview of the Reserve Bank of India, are indulging in unfair trade practices, including charging exorbitant rates of interest. The National Commission has made the observation that rates of interest charged by banks is an unfair trade practice, without even discussing the scope of the definition under section 2(1)(r) of the Act. The only reason given with respect to the practice of charging excessive interest being unfair trade practice is that "if the Banking Regulation Act, 1949 requires that the RBI shall discharge certain functions in the public interest and the RBI does not discharge such functions, it would amount to unfair trade practice, but, that question is not required to be dealt with finally in this matter."

9. It is argued that the exercise of jurisdiction by the National Commission is ostensible and *non-est* in law. The administrative policy decisions of the determination of interest on credit cards and the regulation of the banks across the country, are within the specific statutory domain of the Reserve Bank of India. The Parliament of India, under List I of the Seventh Schedule of the Constitution of India had conferred upon the Reserve Bank of India, the powers of subordinate legislation to formulate directives, circulars, and administrative policies, having statutory force and being binding on all Banks from time to time. Our attention is also drawn to the Preamble of the Reserve Bank of India Act, 1934 which enlists the endeavour of the RBI to "secure monetary stability in India, having a modern monetary policy framework to meet the challenge of an increasingly complex economy, while maintaining price stability is the endeavour of the Reserve Bank of India.

10. The observations by the National Commission that the rate of interest, in excess of 30% per annum is an unfair trade practice, is per se illegal and is an interference with the clear, unambiguous delegation of powers in favour of the Reserve Bank of India and runs contrary to the legislative intent of the Banking Regulation Act, 1949.

11. It is submitted that the National Commission has ostensibly exercised jurisdiction by supplanting itself as the regulator of the banking systems instead and in the place of Reserve Bank of India, notwithstanding the bar under section 21A of the Banking Regulation Act, 1949. It is contended that Section 21A and 35A of the Banking Regulation Act, 1949 are enabling provisions for the Reserve Bank of India to give directions/guidelines to banks/banking companies, in the public interest. Section 21A in specific, creates an embargo upon courts/tribunals to re-open and adjudicate upon transactions on the ground that the rate of interest is excessive. The said provisions are reproduced as under:

"21A: Rates of interest charged by banking companies not to be subject to scrutiny by courts:
Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 2018), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

35A: Power of the Reserve Bank to give directions:

(1) Where the Reserve Bank is satisfied that:

(a) In the public interest; or

(a) in the interest of banking policy; or [inserted by Act 58 in the [public interest]; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company;
or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(1) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

12. The scope of the statutory bar under section 21-A of the Banking Regulation Act, 1949 has been comprehensively dealt with by this Hon'ble Court in the **Central Bank of India Vs Ravindran**¹ wherein it has been observed that "With effect from 15.2.1984, Section 21A has been inserted in the Act, which takes away power of the court to reopen a transaction between a banking company and its debtor on the ground that the rate of interest charged is excessive. The provision has been given an overriding effect over the Usurious Loans Act, 1918 and any other provincial law in force relating to indebtedness." It was also observed by this Hon'ble Court, that for all transactions, which may not be squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy. Thus, in view of this statutory bar, the Complaint of the Respondent nos.1 to 3, which is only based on the higher rates of interest, could not have been entertained by the National Commission and deserved to be dismissed at the very threshold.

13. Further, in exercise of powers conferred under Section 35A read with Section 56 of the Banking Regulation Act, 1959 & being satisfied that it is necessary and expedient in the public interest so to do, it is also well within the exclusive jurisdiction of the Reserve Bank of India to take corrective and/or penal steps, *suo-moto* or on receipt of any representation or inquiry thereof, *qua* any such act in deference to its policy or circular.

16. On merits, it is the assertion of the Appellants that the rates of interest formulated by them, are in conformity with the directions of the Reserve Bank of India. As a matter of policy pursuant to the liberalization of the economy and consequent deregulation of interest rates, the RBI vide Circulars dated 21.10.2003 and 02.07.2007 provided that:

"Credit card dues are in the nature of non-priority sector personal loans, and as such, banks are free to determine the rate of interest on credit card dues without reference to their BPLR and regardless of the size"

The same circulars also gave comprehensive directions on charging interest rates on advances and the Benchmark Prime Lending Rate (BPLR) as under:

"Benchmark Prime Lending Rate (BPLR) and Spreads: 2.2.1 With effect from October 18, 1994, RBI has deregulated the interest rates on advances above Rs. 2 lakhs and the rates of interest on such advances are determined by the banks themselves subject to BPLR and Spread guidelines. For credit limits up to Rs. 2 lakh banks should charge interest not exceeding their BPLR. Keeping in view the international practice, and to provide operational flexibility to commercial banks in deciding their lending rates, banks can offer loans at below BPLR to exporters or other creditworthy borrowers, including public enterprises, on the basis of a transparent and objective policy approved by their respective Boards. Banks will continue to declare the maximum spread of interest rates over BPLR.

2.2.3. Banks are free to determine the rates of interest without reference to BPLR and regardless of the size in respect of loans for purchase of consumer durables, loans to individuals against shares and debenture/bonds, other non-priority sector personal loans, etc. as per details given in paragraph

2.4.

2.4. Freedom to fix Lending Rates:

2.4.1 Banks are free to determine the rates of interest without reference to BLPR and regardless of the size....."

17. The said circulars clarify that credit card dues constitute non-priority sector personal loans and Banks are free to determine the rates of interest, without reference to PLR and regardless of their size. The Reserve Bank of India had given this discretion to the banks to determine rates of interest, as per the market forces, while maintaining transparency with the credit card holders. The Appellants assert that they have duly complied with all the requirements of the Reserve Bank of India, and none of the practices adopted by them, run contrary to the intent or directions of the Reserve Bank of India and its circulars.

.....

SUBMISSIONS ON BEHALF OF THE RESERVE BANK OF INDIA

34. The Reserve Bank of India has the statutory power under section 21 and 35A of the Banking Regulation Act, 1949 for determining the policy in relation to the advances to be followed by the bank from time to time, which the banks are bound to follow. In accordance with this power granted by the Act, the RBI has from time to time issued directives/guidelines to the banks regarding interest rates on advances, credit cards and is of the considered opinion that there exist no extraneous circumstances of violation that warrant an action by the RBI against any bank or the banking sector.

35. The bone of contention raised by the original Complainants that the RBI ought to have taken action against the Banks, has been clarified by the Reserve Bank of India, stating that there is no material before it or the Complainants or the National Commission, to establish that any of the banks have acted contrary to the policy directives issued by the Reserve Bank of India. Hence, the question of directing the RBI to act against any bank does not arise in the facts and circumstances of the present case. The RBI has also submitted that there is no question of the RBI being directed to impose any a cap on the rate of interest, either on the banking sector as a whole, or in respect of any one particular bank, contrary to the provisions contained in the Banking Regulation Act, and the circulars/directions issued thereunder.

36. Even on merits, it has been submitted that the interest rates on advances are determined by individual banks as per their internal policies approved by their Board of Directors, subject to the regulatory guidelines contained in the Master Direction, Reserve Bank of India (Interest Rate on Advances) Directions, 2016 issued vide DBR. Dir. No. 85/13/03/00/2015-16 dated March 3, 2016 (as updated till September 12, 2023). In regard to fixed rate loans, it has been specified that the fixed rate of tenor below 3 years shall not be less than the benchmark rate for similar tenor.

37. It has been submitted that in terms of the regulatory guidelines issued vide Master Direction-Credit Card & Debit Card-Issuance and Conduct dated April 21, 2022 as on March 07, interest charged on credit cards shall be justifiable having regard to the cost incurred and the extent of return that could be reasonably expected by the card user.

38. Most pertinently, it is the assertion of the Reserve Bank of India, that it is only the Hon'ble Supreme Court under Article 32 and the High Courts under Article 226, that have the power of judicial review of statutory instruments. It is not within the executive domain of the National Commission to judicially review the circulars/directives and hold that the policy contained therein is invalid. The National Commission is bound to accept the policy contained in the circulars as valid and cannot question the policy decision of the Reserve Bank not to impose a ceiling on the rate of interest to be charged by the Banks on the credit card transactions¹.

CONSIDERATION OF SUBMISSIONS

39. Upon hearing the counsels for the parties & the intervenor and considering their detailed written submissions, the questions for determination before this Hon'ble Court are as under:

- (i) Whether the Respondent organization has the locus to approach the National Commission?
- (ii) Whether the National Consumer Disputes Redressal Commission, has the jurisdiction to interfere with banking operations, which is the exclusive statutory domain of the Reserve Bank of India?

(iii) Whether the National Consumer Disputes Redressal Commission had the jurisdiction to fix a maximum ceiling rate of interest to be charged by banks from their credit card holders for their failure to make full payment on the due date, at the behest of the Reserve Bank of India & unilaterally direct banks/non-banking financial institutions to charge rates of interest not beyond the 30% p.a., in absence of an instruction/directive of the Reserve Bank of India?

(iv) Whether the Impugned Judgment interferes with the contract executed between the parties?

(v) Whether charging rate of interests by banks in the manner as advised by Reserve Bank of India vide its master circulars & notifications being independent of a standard ceiling rate prescribed by the Reserve Bank of India, constitute an unfair trade practice?

ANALYSIS

i. Whether the Respondent organization has the locus to approach the National Commission?

40. To maintain a complaint under the provisions of the Consumer Protection Act, 1986, a complainant must be either a 'consumer' within the meaning of Section 2(1)(d) of the Act or it must fit into Section 12(1) of the Act. The definition of the term "consumer" is defined herein as under:

"2.(1)(d) "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;"

To be concluded in the next issue.....

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