

BIHAR STATE HOUSING BOARD

v.

ARUN DAKSHY

AUGUST 23, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

Bihar State Housing Board (Management and Disposal of Housing Estate) Regulation, 1983—Non allotment of house—Refund of earnest money—Regulation prescribing interest @ 5% thereon—Consumer Protection Commission awarding interest @ 18%—Correctness of—Held : Commission travelled beyond the statutory regulation—Respondent entitled to interest @ 5% only—Consumer Protection.

The question which has arisen for consideration in the present appeal is whether the National Consumer Commission was right in awarding interest @18% on refund of earnest money deposited by respondent for allotment of MIG House under Bihar State Housing Board (Management and Disposal of Housing Estate) Regulation, 1983.

Allowing the appeal, the Court

HELD : Regulation 45 of the Bihar State Housing Board (Management and Disposal of Housing Estate) Regulation, 1983 provides that simple interest @ 5% will be payable on the money so deposited. The Regulation being self-contained, the Commission should not have travelled beyond the interest regulated by the statutory regulation. The respondent is entitled to interest @ 5% as envisaged under Regulation 45. [822-A-B-C]

Ghaziabad Development Authority v. Balbir Singh, [2004] 5 SCC 65, relied on.

Bihar State Housing Board & Ors. v. Vijay Sharan & Ors., SLP (C) No. 26021-22 of 1995 disposed of by Supreme Court on 17.2.1997, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7225 of 2002.

A From the Judgment and Order dated 5.12.2001 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 2099 of 1999.

Sharvan Kumar and Himanshu Shekhar for the Appellant.

B Respondent-Ex-parte.

The Judgment of the Court was delivered by

C **H.K. SEMA, J. :** This appeal preferred by the Bihar State Housing Board is directed against the judgment and order dated 5.10.2001 passed by the National Consumer Disputes Redressal Commission (hereinafter the Commission) passed in Revision Petition No.2099 of 1999 affirming the orders passed by the State Consumer Dispute Redressal Commission and District Consumer Forum awarding interest @ 18%.

D Despite receipt of the notice, none entered appearance on behalf of the sole respondent.

Briefly stated the facts are as follows:-

E On 27.7.1989, the respondent deposited an amount of Rs.15,000 for allotment of MIG House in Barari Housing Colony in Bhagalpur, Bihar, under the Bihar State Housing Board (Management and Disposal of Housing Estate) Regulation 1983 (hereinafter the Regulation). Under the Regulation, the allotment of plots/house/flat is to be made by draw of lottery. The respondent was unsuccessful in the draw of lottery and so he could not be allotted a house under the MIG category. On 28.7.1993, the respondent issued legal notice to the appellant for refund of an amount of Rs.15,000. The aforesaid notice was replied by a letter dated 6.10.1993 by the appellant, directing the respondent to submit original pay-in-slip for the purpose of refund. On 15.11.1994, the respondent submitted the original pay-in-slip.

F Thereafter, the appellant refunded Rs.15,000 to the respondent vide cheque No.223231 dated 6.12.1995. On 26.3.1996, the respondent filed a complaint before the District Forum. The District Forum passed an Award directing the appellant to pay Rs.15,000 with 18% interest. The appellant was also directed to pay Rs.5,000 as compensation. Being aggrieved, the appellant

G filed an appeal before the State Consumer Commission, which was rejected,

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being barred by limitation. A

Notice was issued limited to the question of rate of interest.

At this stage, it may be noted that the contention of the appellant, before the Commissions was that as per Regulation 45 of the Regulation, simple interest @ 5% will be payable on an amount of earnest money. It would appear from the impugned order of the National Commission dated 5th October, 2001, the same contention was also raised before the Commission without any result. It was also brought to the notice of the Commission that in an identical case in Civil Appeal Nos.1566-67 of 1997 arising out of S.L.P (C) Nos.26021-22 of 1995 titled *Bihar State Housing Board & Ors. v. Vijay Sharan & Ors.* disposed of on 17.2.1997, this Court held that the respondents are entitled to interest @ 5% under Regulation 45 of the Regulation instead of awarded interest @ 11%. This Court further pointed out that when the Regulation fixed the rate of interest, the Commission could not give a direction to pay the interest contrary to the interest regulated by the statute. B C D

It is noticed that in the impugned order while affirming the Award of interest @ 18% awarded by the District Forum and the State Consumer Commission, the National Commission referred to the interest awarded @ 18% by the Commission in the case of *HUDA v. Darsh Kumar*. Awarding of interest @ 18% by the National Commission in *Darsh Kumar* (supra) was considered by this Court in the case of *Ghaziabad Development Authority v. Balbir Singh*, [2004] 5 SCC 65, where this Court deprecated the Award of 18% interest at a flat rate after threadbare discussion. It was held in paragraph 10 of the judgment as under:- E F

“As has been set out hereinabove, the National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This, in our view, is unsustainable. Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case.” G

Learned counsel for the appellant contended and in our opinion rightly, that the Commission should not have travelled beyond the interest regulated by the statutory regulation, which fixed at 5% and awarding 18% interest dehors the Regulation 45 of the said Regulation. In the instant case, in the H

- A Regulation itself namely Regulation 45 provides that the simple interest @ 5% will be payable on the money so deposited. The Regulation being self-contained and the interest payable under the Regulation being regulated by the statute under Regulation 45 of the Bihar State Housing Board Regulation, the Commission should not have travelled beyond the pale of statutory
- B Regulation, apart from awarding interest @18% at the flat rate being deprecated by this Court in *Balbir Singh* (supra).

For the reasons aforesated, the impugned orders are not sustainable in law and they are being quashed and set-aside. The respondent is entitled to interest @ 5% as envisaged under the Regulation 45. The Award of compensation of Rs.5000 is also set-aside. The appeal is allowed. No costs.

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D.G.

Appeal allowed.