

Sub Post Master Vs. Ashok Kumar and Another.

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Dec-04-2009

Judge : Barkat Ali Zaidi, President & M.L. Sahni, Member

Appeal No. : First Appeal No. 2008 of 309

Appellant : Sub Post Master

Respondent : Ashok Kumar and Another.

Judgement :

Barkat Ali Zaidi, President (Oral):

1. An application form of the complainant for an admission in OP No. 2 IIT sent by speed post through OP No. 1 was not received, in consequence whereof the respondent complainant could not appear in admission test. The Post Office as well as IIT are both parties to the proceedings. The IIT says that it did not receive the application while the Post Office says it delivered the speed post.

2. The District Forum found that since the receipt produced by the Post Office does not bear the signature of the recipient it was not proved that the article was delivered. We endorse the finding of the District Forum in this regard because without identification of the person receiving the article and without the signature the delivery of the article cannot be upheld. The District Forum, however granted Rs. 10,000 towards compensation and Rs. 2,000 as cost of litigation.

3. The appellant OP No. 1 Post Office has therefore come in appeal before this Commission.

4. Heard Mr. Rajiv Bansal, Govt. Advocate of the appellant and Ms. Pooja Bansal, Counsel for the respondent No. 1 complainant while none present for respondent No. 2.

5. The argument of the Counsel for the Post Office that under the Rules of Post Office framed in regard to articles sent by the speed post, the damages cannot exceed double, the amount of composite fees or Rs. 1,000 whichever is less. The National Commission in its judgment dated 18th September, 2002 in Revision Petition No. 15 of 1997 while deciding a bunch of Revisions held that damages cannot exceed because it is statutorily fixed and is binding on the Consumer Forum.

6. This is what the National Commission said while setting aside the judgment passed by the State Commission in Vijay Ratan Aggarwals and Ors., R.P. Nos. 15 of 1997, 1006 of 2001 and 1035 of 2002, dated 18.9.2002.

We have extensively set out relevant provisions with respect to articles sent by Speed Post as these are not readily available to District Forums and State Commission. But then it is Section 6 of the Post Office Act which is the mother of all liabilities under which Postal Department or its officials can be saddled with. Section 6 we reproduce:

6. Exemption from liability for loss, mis-delivery, delay or damageThe Government shall not incur any liability by reason of the loss, mis-delivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, mis-delivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

Section 6 of the Post Office Act has been interpreted by this Commission in the case of Senior Post Master, G.P.O. Pune v. Akhil Bhartiya Grahak Panchayat and

Anr., II (1995) CPJ 230 and in the Post Master, Imphal and Ors. v. Dr. Jamini Devi Sagolband, I (2000) CPJ 28. Section 6 exempts Post Office from any liability for loss, mis-delivery, delay or damage of any postal article in course of transmission by post, except to such extent as the liability may be undertaken by the Government in the express terms. An officer of the Post Office is similarly exempted from any liability unless he has caused loss, etc. fraudulently or by his wilful act or default.

Based on Post Office Act and the Rules, argument of Mr. B.K. Agarwal and Mr. Sunil Sharma Counsel for the Post Office is quite simple and that no compensation is payable outside these rules. Mr. Vishnu Mehra, learned Counsel, however, submitted that one has to see the background under which Section 6 of the Post Office Act has been enacted. According to him scheme of Speed Post is a departure to which Section 6 would not be applicable. He said first part of Section 6 deals with complete immunity of the Government from any liability. But second part would be applicable regardless of any scheme under which postal article is sent. He, therefore, said that Postal Authorities cannot claim absolute immunity in respect of article sent by Speed Post. Mr. Mehra said even if it is assumed Postal Authorities are entitled to immunity under the first part of Section 6 of the Post Office Act, they are not so entitled on the facts of these cases before us as it was a clear case of default on their part. We do not think we would agree wholly to submission of Mr. Mehra. He is right to the extent that no officer of the Post Office can escape liability over any loss, mis-delivery, delay or damage to the postal article when it has been caused by him fraudulently or by willful act or default. This part of Section 6 will certainly apply when article is also sent by Speed Post. However, there is no allegation of any fraud, wilful act or default against any of the officers of the Post Office in the present case.

Scheme of Speed Post has been provided under Indian Post Office Rules of 1933 by inserting Rule 66B. As noted above, these Rules are statutory. Complaints regarding any article booked under Speed Post (including demand for refund of fees in cases of non-delivery or articles within the stipulated time) are to be preferred within three months from the date of booking of the articles. Rule 66B was further amended by inserting two more sub-rules which provided that in case

of delay of Speed Post article beyond the norms determined by the Department of Posts from time-to-time compensation will be provided shall be equal to composite Speed Post charges paid. It also provided that in the event of loss of Speed Post article or loss of contents or damage to the contents, compensation shall be double the amount of the composite fee Speed Post charges paid or Rs. 1,000 whichever is less. It would be thus seen that maximum compensation statutorily fixed is Rs. 1,000 which can be granted when there is a loss of Speed Post article or loss of its contents or even damage to the contents.

Under the Consumer Protection Act 1986, we cannot go beyond the statutory provisions and grant compensation more than what is statutorily fixed. A Consumer Forum is even bound by the terms of the contract however, oppressive these may be unless those terms are against the public policy, illegal or void.

7. In accordance with the findings of the National Commission it should be held that no compensation beyond double the amount incurred in the speed post or Rs. 1,000 or whichever is less are payable. The respondent No. 1 has not clarified as to what was the amount spent by him in sending the article by speed post and no receipt has been filed. Since no amount has been specified we take into account the normal charges of speed post for Rs. 25 the double whereof will be Rs. 50, the complainant is entitled for. The award of Rs. 10,000 was in the circumstances at variance with law and has therefore to be modified.

8. The order of the District Forum is, therefore, modified accordingly and instead of Rs. 10,000 as awarded by the District Forum, the respondent will be entitled to Rs. 50 as compensation, cost of proceedings in this Commission is fixed Rs. 2,000 and Rs. 2000 costs awarded by the District Forum, and as such respondent will be entitled to Rs. 4,000 as litigation costs. Appeal decided accordingly.

9. The order shall be complied with within one month from the date of receipt of this order.

10. Bank Guarantee/FDR, if any furnished by the appellant, be returned forthwith.

11. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record room.

Ordered accordingly.

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