

Superintendent of Post Offices and Others Vs. Vikesh Dogra, Proprietor of M/S. G.V. Enterprises

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Court : Himachal Pradesh State Consumer Disputes Redressal Commission
SCDRC Shimla

Decided On : Apr-09-2014

Judge : (Retd.) Surjit Singh, President & the Honourable Mrs. Prem Chauhan, Member

Appeal No. : First Appeal No. 402 of 2013

Appellant : Superintendent of Post Offices and Others

Respondent : Vikesh Dogra, Proprietor of M/S. G.V. Enterprises

Judgement :

Justice (Retd.) Surjit Singh, President (Oral)

1. This appeal, under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 12.11.2013, of learned District Consumer Disputes Redressal Forum, Mandi, whereby a complaint, under Section 12 of the Consumer Protection Act, 1986, filed against the appellants by respondent-Vikesh Dogra, has been allowed and a direction given to the appellants to pay a sum of Rs.42,470/-, on account of value of the contents of postal parcel within 30 days, failing which to pay interest at the rate of 9% per annum, from the date of filing of the complaint, to the date of payment of the aforesaid amount of money, and also to pay Rs.3,000/-,

as compensation and Rs.2,000/-, as costs.

2. Respondent-Vikesh Dogra, filed a complaint, under Section 12 of the Consumer Protection Act, 1986, alleging that on 13.08.2012, he booked a parcel, addressed to T.V.C. Sky Shop Limited, Thane, Mumbai, with Head Post Postmaster, Post Office Nerchowk (appellant No.2) and that the parcel contained, thirteen articles, valuing Rs.42,470/-. He alleged that on 14.09.2012, he received a telephonic call from Post Office, Nerchowk that the assignee, had refused to accept the parcel and he should collect the same. It was stated that when the complainant went to Post Office to collect parcel, it was found that the same had been tampered with. So, he refused to take the delivery. He then addressed a letter dated 17.09.2012, in response to which he received a letter dated 19.09.2012 from respondent No.2, asking him (complainant) to take delivery of open parcel. He refused to take delivery of the open parcel, as the box in which, articles were packed, was empty. On these allegations, respondent sought a direction to the appellants to pay money, equivalent to the price of the contents of parcel, and also to pay expenses, and bear litigation expenses.

3. Reply, verified by appellant No.1, was filed, in which, it was denied that parcel had been tampered with. It was admitted that respondent had been asked to take open delivery, but he refused. It was stated that the complaint was barred, under Section 6 of the Indian Post Office Act, 1898.

4. Learned District Forum, vide impugned order, has allowed the complaint and directed the appellants to pay a sum of Rs.42,470/-, on account of value of the articles, contained in the parcel and also to pay compensation and costs, as aforesaid.

5. We have heard learned counsel for the appellants and gone through the record. Nobody has put in appearance on behalf of the respondent, though on the previous date, an Advocate appeared for him and also filed power of attorney.

6. Though plea that the appellants are exempt from liability, by virtue of Section 6 of Indian Post Office Act, 1898, has been taken in the reply to the complaint, yet in view of the peculiar facts and circumstances of the case, the aforesaid provision of

law, would not come to the rescue of the appellants. Section 6 says that Government shall not incur any liability by reason of the loss, mis-delivery or delay of, or damage to, any postal article in the course of transmission by post, except insofar as such liability may in express terms be undertaken by the Government 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.

7. In the present case, respondent had booked a parcel, which weighed 7700 Grams. Articles were packed in a box. These facts are not denied. Also, it is made out from the material on record, as would be discussed, hereinafter, that parcel had been tampered with and the box was empty, when the same was sought to be delivered back to the respondent, because the consignee had refused to take the delivery. That means, the loss was caused by employees of the Government fraudulently, or by their wilful acts of removing the contents of the box and, therefore, Section 6 would not come to their rescue.

8. It is not in dispute that parcel, weighed 7700 Grams and a sum of Rs.281/- was charged from the respondent for transmitting the parcel to the addressee. Respondents plea is that he had received a telephonic call on 14.09.2012 from appellant No.2, informing that the addressee had refused to take the delivery and he should collect the parcel. Appellants do not deny this fact. Respondent has further pleaded and sworn in his affidavit, submitted by way of evidence, that when he went to the Post Office at Nerchowk, he saw that parcel was tampered with and the box was empty. Though in the reply, which is verified by appellant No.1, it is denied that parcel was tampered with, yet a letter dated 19.09.2012, available at pages 45 and 56 of the record of learned District Forum, was written by appellants to the respondent, in response to his letter dated 17.09.2012 complaining that the parcel had been tampered with and the box was empty, asking him to take open delivery of the parcel. By requiring respondent to receive the open delivery of parcel, appellants impliedly admitted that parcel had been tampered with.

9. Parcel had not been collected by the respondent. It is supposed to be still available with the appellants. They did not produce it before learned District

Forum, in support of their contention that it had not been tampered with, or the box, containing the articles, was not empty. Also, they did not plead that weight of the parcel was equal to the weight, which was recorded at the time of booking of the parcel, i.e. 7700 Grams. Respondent declared in his affidavit that box was empty and no article was there in the parcel. Appellants did not file the affidavit of Incharge of Nerchowk Post Office, i.e. appellant No.2, to controvert the declaration of the respondent.

10. Respondent very categorically stated both in the complaint, as also in the affidavit that he had submitted the detail of articles, contained in the parcel, at the time of booking the parcel and had also written the value of the articles on the cover of the parcel. In the affidavit of appellant No.1, there is no mention that list of articles had not been submitted with the parcel, nor is it stated that the value of the contents of parcel, was not mentioned on the outer cover. Appellants could have very easily disproved the contention of the respondent that the value of the articles was mentioned on the outer cover of the parcel, by producing the parcel, or its outer cover as the same is available with them. So, it can legitimately be inferred that the value of the articles was Rs.42,470/-, as testified by the respondent, in his affidavit.

11. In view of the above stated position, appeal filed by the appellants is dismissed.

12. A copy of this order be sent to each of the parties, free of cost, as per Rules.

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