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Telegraph Master (D) and Ors. Vs. F.E. D'Silva and Ors.

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Court : Karnataka

Decided On : Jul-26-1996

Reported in : ILR1997KAR994

Judge : Tirath S. Thakur, J.

Acts : Telegraphs Act, 1885 - Sections 9; [Consumer Protection Act, 1986](#) - Sections 2

Appeal No. : W.P. No. 13398 of 1991

Appellant : Telegraph Master (D) and Ors.

Respondent : F.E. D'Silva and Ors.

Advocate for Def. : Ravi B. Naik, Adv.

Advocate for Pet/Ap. : Jayalakshmi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Tirath S. Thakur, J

1. This Writ Petition calls in question an order passed by the District Consumer Forum, Belgaum dated 17th of August 1990 and that passed by the State

Consumer Redressal Forum, Bangalore dated 21st of November 1990, whereby Respondent No. 1 has been awarded a compensation of Rs. 5,000/- on account of the delay caused by the Telegraph Department in delivering a telegram sent through it. The challenge arises in the back ground of the following facts:-

The claimant respondent's son had applied for the post of an Aerodrome Officer in the National Air Ports Authority and was selected for the post. By an order dated 1st of November 1989, he was required to report for duty at Allahabad on 27th of November 1989. This order was received by the claimant but since his son had in the meantime joined MBA course in Birla Institute at Ranchi, the claimant sent a telegram to him on 8th of November 1989 asking the former to return immediately with the original certificates and stating that he may have to report at Allahabad on 25th of November 1989. This telegram was tendered in the Telegram Office at Tilakwadi, Belgaurn but was delivered to the addressee only on 25th of November 1989 thereby making it difficult for him to collect the documents, undergo medical examination and report for duty at Allahabad on 27th of November 1989. Aggrieved by the failure on the part of the Department in delivering the telegram within a reasonable time the first respondent filed a complaint against the petitioners herein in the District Forum at Belgaum claiming a compensation of Rs. 99,900/- and alleging that the delay in delivering the telegram had resulted in his son losing a golden opportunity to join the service as an Aerodrome Officer. The delay, it was alleged, was entirely due to the negligence of the Department in delivering the telegram.

2. The claim made by the 1st respondent was resisted by the petitioners inter alia on the ground that the provisions of the [Consumer Protection Act, 1986](#) were not applicable in the light of the provisions of Section 7B of the Indian Telegraphs Act, which provide for arbitration. It was also urged that the complainant- Respondent No. 1 herein was not a consumer within the meaning of Section 2(1)(a) of the Act and that the complainant and his son alone were responsible for the loss of job by the latter.

3. The complaint was tried by the District forum, who eventually by an order dated 17th of August 1990 held that the jurisdiction of the Forum to entertain a claim for

compensation on account of the defective service was not taken away by Section 7B of the Indian Telegraphs Act, 1885 and that the Telegraph Department was negligent in not delivering the telegram without delay. On the question of compensation, the Forum held that a sum of Rs. 10,000/- as compensation was reasonable and accordingly awarded the same with interest at 12% p.a. from the date of the complaint till its realisation.

2. Aggrieved, the petitioners preferred an appeal before the State Consumer Disputes Redressal Form at Bangalore and inter alia urged that Rule 5 of the Rules framed under the Telegraph Act gave an immunity to the petitioners against any claim for compensation on account of loss, injury or damage arising or resulting from the failure on its part to deliver the telegram in time. The State Commission, however, did not find favour with this argument and by its order dated 21st of November 1990, rejected the same, while partly allowing the appeal and reducing the amount of compensation awarded from Rs. 10,000/- to Rs. 5,000/- with interest awarded by the Forum. The petitioners have come up with the present Writ Petition against the aforesaid two orders as already indicated earlier.

3. Appearing for the petitioners, Learned Central Government Standing Counsel, argued that the petitioners were protected against any loss or damage that may occur in consequence of any Telegraph Officer failing in his duty with respect to transmission or delivery of any message.

4. Reliance in this regard was placed upon Section 9 of the Indian Telegraphs Act, which reads thus:-

'9. Government not responsible for loss or damages-The Government shall not be responsible for any loss or damage which occur in consequence of any telegraph officer failing in his duty with respect to the transmission or delivery of any message and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously or fraudulently.'

5. A plain reading of the provision extracted above would show that the protection granted therein is not available in case it is found that the loss or damage complained of has been caused on account of any negligence or fraudulent act on

the part of any such Officer. In other words, the provision does not provide a total immunity against a claim for damages in all situations. The immunity is qualified and is available only in case of bonafide errors or failures. Acts of negligence, malice or fraud committed by the Officers of the Telegraph Department, which may result in any damage on account of non-transmission or non-delivery of any message entrusted to the Department do not enjoy any protection under Section 9. It is therefore futile for the petitioners to call in aid the said provision particularly when the District Forum as also the State Commission have concurrently come to the conclusion that the delayed delivery of the telegram in question was on account of the negligence of the employees of the Department. In the light of the said finding returned on the basis of a proper appreciation of the evidence adduced at the trial, there is no option for me except to hold that the negligence in the delivery of the telegram did not enjoy any immunity in terms of Section 9 against a claim for compensation of the payment for the loss of damage that was suffered by the claimant.

6. It was then argued that the service rendered by the petitioners was on no profit and no loss basis and did not fall within the definition of the said expression as appearing in Section 2(o) of [Consumer Protection Act, 1986](#). The expression 'Service' under Section 2(o) has been defined thus:

"service' means service of any description which is made available to potential users and includes the provision, of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.'

7. A plain reading of the provision shows that the same does not make the profit making motive an essential concomitant to bring it within the expression service. As a matter of fact, the term 'service' is widely defined and means service of any description which is made available to potential users and includes the provision of facilities in connection with Banking, financing etc. The expression is not qualified by the requirement of an element of profit making motive. All that is taken out from

the purview of expression service is a service, which is rendered free of charge or which is under a contract of personal service. It is not in dispute that the service rendered by the Government by way of transmission of telegrams is not a service rendered free of charge. In the circumstances, merely because the Government while providing the said service does not have any motive to make profit is not enough for this Court to hold that the same does not amount to a service within the meaning of Section 2(o) of the Act aforesaid. There is, therefore, no merit in this submission either, which fails particularly when no such point appears to have been urged by the petitioners in the appeals before the State Commission.

8. Learned Counsel lastly argued that the telegram form itself contained a stipulation giving to the petitioner an immunity against any claim of compensation arising out of failure of the service affecting transmission or delivery of telegram. Reliance was in this connection placed upon the following expression that is found in the form prescribed for the transmission of telegrams.

'(Presented for Transmission subject to Indian Telegraph Act & Rules). The Government is not liable to make compensation for any loss, injury or damage arising or resulting from any failure of service affecting transmission or delivery of this Telegram.'

9. Two significant features need to be noticed. Firstly the telegram is presented for transmission subject to the provisions of the Telegraphs Act and Rules, according to which negligence, fraud or malice on the part of the Officers of the Department resulting in any loss do not enjoy any protection. Secondly the Government is not liable to make compensation for any loss, injury or damage only if the same arises out of any failure of service affecting transmission. While dealing with the expressions failure of service the Commission had held that there was no such failure nor was any such failure claimed. If at all there was a failure, it was on account of the negligence of the Department, which can hardly absolve it from a claim of compensation. In fairness to the Learned Counsel for the petitioner, it must be stated that she did not argue that a 'Failure of service' affecting transmission of the telegram could not give rise to a legitimate claim for compensation even when such a failure may arise out of negligence on the part of

those providing the service. The legislative intent being the grant of immunity is much too clear from the provisions of Section 9 which specifically excludes cases of negligence, fraud and malice from its protective umbrella. In other words, the stipulation contained in the form relied on by the petitioners does not make any addition to the provisions of the Act or the Rules framed thereunder nor does it amount to any independent contract between the customer and the agency providing the service.

10. In the result, there is no merit in this Writ Petition, which fails and is accordingly dismissed, but in the circumstances of the case, without any orders as to cost.

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