

(2006) 06 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

CHIEF POST MASTER DELHI, G.P.O.

APPELLANT

Vs

Ram Avtar Gupta

RESPONDENT

Date of Decision : 01-06-2006

Acts Referred:

Citation : 2006 2 CPC 549 : 2006 3 CPJ 107

Hon'ble Judges : M.B.Shah , S.N.Kapoor J.

Final Decision : Revision Petition partly allowed

Judgement

1. THIS case illustrates how a public functionary can act maliciously and exercise the power which results in harassment and agony to the citizen. It also illustrates that an ordinary citizen can fight and expose undesirable functioning in the public offices by not succumbing to the demand of illegal gratification.

2. FACTS in brief are that, Ram Avtar Gupta, complainant, filed complaint No. 2536 of 1999 before the District Forum (District North), Delhi, alleging deficiency in service against the Chief Post Master, G.P.O., Delhi, for not delivering the speed post letter in time. It is the say of the complainant that a speed post letter containing four air tickets for a flight scheduled to leave on 26th May, 1998 at 11.00 a.m., was sent to him at his address at Delhi from Indore on 22nd May, 1998. When the complainant did not receive the said letter upto 25th May, 1998, he made inquiries on telephone from the G.P.O. about the status of the same. He was informed that the said letter would be delivered to him by 7.00 p.m. positively. Further, it is the say of the complainant that as he did not receive the letter till 9.00 a.m. on 26th May, 1998 he had asked his son to collect the letter from the G.P.O. The son of the complainant went to the G.P.O. and met Smt. Sudesh Gupta, the concerned official, Shri Kirpal Singh, A.P.M., and Shri Rattan Chand, DPGM. It was the allegation of the complainant that these officials demanded Rs. 1,000 as illegal gratification for the delivery of the said letter and ultimately they agreed to settle the matter at Rs. 500 only. But, his son was not having Rs. 500 with him, hence, the letter was not given to him. The son of the complainant repeatedly prayed for delivery of the letter as the air tickets were

necessary for journey. But the officers refused to deliver the letter without payment. Because of this, the complainant was required to cancel the trip.

Thereafter, complaint No. 2536 of 1999 was filed before the District Forum praying that the opposite party be directed to reimburse the cost of the air tickets and compensation be also awarded for the harassment and torture caused to him.

3. IT was the contention of the opposite party before the District Forum that the concerned Postman went to deliver the speed post letter, but the same was returned with the remark "not met" and the above said letter was delivered to the addressee on 26th May, 1998. The District Forum rejected the contentions of the opposite party and passed the order on 6.6.2000 directing the petitioner to: (a) pay to the complainant Rs. 15,000 as compensation including portion of price of Rs. 12,000 of air tickets which were wasted for alleged deficiency in service and inconvenience caused to him and (b) pay to the complainant Rs. 1,000 as cost of litigation. The District Forum also ordered that the aforesaid amount of Rs. 16,000 shall be realized by the respondent from the pay of the defaulting officials namely, Smt. Sudesh Gupta, the concerned official, Kripal Singh, A.P.M. and Shri Rattan Chand, D.P.G.M. To root out corruption from public offices it is recommended that departmental action against the above mentioned officials for major punishment should also be taken.

4. AGGRIEVED by the order of the District Forum, the Chief Post Master, Delhi, G.P.O., petitioner herein, filed Appeal No. A-1594 of 2000 before the State Commission, Delhi. The State Commission, dismissed the appeal by holding that there is no dispute with regard to the despatch of speed post letter from Indore to Delhi on 22nd May, 1998. As stated by the petitioner it was received in Delhi G.P.O. on 25th May, 1998. As the complainant has not received the said letter he contacted the officers of the appellant on telephone about the status of the speed post letter. At that time he was informed that the letter would be delivered to him at 7.00 p.m. When it was not delivered till 9.00 a.m. on 26th May, 1998, the complainant deputed his son to collect the same which was not delivered to him as stated above. The State Commission has also disbelieved the contention of the petitioner that the Postman returned the letter on 25th May, 1998 with a remark "not met" which apparently appears to be a false one. In our view, this finding is fully justified and we are of the view that this is an apparent case of harassment for fraudulent motive. Hence, the order passed by the District Forum directing the petitioner to pay compensation cannot be said to be in any way erroneous. This is also in conformity with the law laid down by the Apex Court in Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC)=(1994) 1 SCC 243.

5. FURTHER, the State Commission rightly referred to Section 6 of the Indian Post Offices Act, 1890, and observed that in case of fraudulent or wilful act protection of Section 6 would not be available to the petitioner. This finding is apparent from Section 6 of the Indian Post Offices Act, 1890, which is as under:

"6. The Government shall not incur any liability by reasons of the loss, misdelivery or delay of, or damage to any postal article in course of transmission by post except insofar 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, misdelivery, delay or damage unless he has caused the same fraudulently or by his wilful act of default."

6. THE aforesaid section makes it abundantly clear that if damage is caused fraudulently or by wilful act of default, the Government shall incur the liability for the loss, mis-delivery or delay in delivery of the postal article. In Lucknow Development Authority (supra) it is observed: "A Public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it."

Compensation : In this revision petition notice was issued by this Commission on 10.11.2000 only for the limited purpose of deciding the quantum of damages awarded by the District Forum.

However, the finding recorded by the District Forum that the complainant has suffered loss of the price of the air ticket cannot be justified. Because, by cancelling the air ticket the complainant was entitled to get refund of the amount after some deduction.

7. CONSIDERING this aspect, we direct that instead of Rs. 16,000 in all as ordered by the State Commission, the petitioner shall pay, in all, a compensation of Rs. 10,000 which would include the cost of litigation. Learned Counsel for the petitioner submitted that as recommended by the District Forum, the departmental inquiry was held against the defaulting officers, but they were not found guilty. In our view, it is unfortunate that in such an apparent case, in departmental inquiry, officers get benefit. In these proceedings, for us, it is not necessary to decide whether concerned officers were guilty or not. In our view, it is proved beyond doubt that the letter was intentionally and fraudulently not delivered to the complainant at his address or was not handed over to his son, who beseeched the officers for its delivery.

8. IN the result, the revision petition is partly allowed. The impugned order passed by the District Forum is modified and it is held that petitioner shall pay in all Rs. 10,000 to the complainant which would include compensation for harassment and mental torture as well as costs of litigation. 7. We appreciate the zeal of the complainant in exposing misconduct of the officers. Revision Petition partly allowed.