
(1999) 11 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

IN THE MATTER OF : THE MANAGER, M/S. SPEED POST
BUSINESS OFFICE

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-11-1999

Acts Referred:

Citation : 2001 2 CPJ 33

Hon'ble Judges : Sardar Ali Khan , R.L.Sudhir J.

Final Decision : Orders passed

Judgement

1. THIS enquiry was initiated on a complaint by Ms. Seema Ajwani, Asstt. Manager (PA and MD) of Informatics Computer Systems, New Delhi against the Manager, Speed Post Business Office, Bhai Veer Singh Marg, Department of Post, New Delhi (the respondent for brief). The said complaint was treated as information and the matter was investigated into by the Director (Research) and Preliminary Investigation Report was submitted to the Commission recommending for institution of enquiry. After going through the complaint and the PIR the Notice of Enquiry under Sections 36A, 36B(d) and 36D for indulging into unfair trade practices was issued against the respondent on 24.9.1996 returnable on 5.11.1996, which reads as under : "Whereas the respondent, namely, Speed Post Business Office undertakes to deliver speed post letters and envelopes to the addressees and is rendering "postal services". And Whereas information has been furnished by M/s. Informatics Computer Systems that two letters dated 8.10.1994 - one addressed to Shri G.K. Bakshi, Joint Director (Planning), Department of Education, Government of Sikkim and another addressed to Shri Gautam Rai Chowdhary, Hakimpur, Siliguri, were delivered to the addressees on 22.10.1994 and 24.10.1994 respectively. And whereas there is information with the Commission that as per Postal Guide, Inland Services, a publication of Director General Posts", India 1992 under the head "Guaranteed Delivery", the following is indicated : "Articles booked before a specified time, known as CUT-OFF TIME, which may be different for different destinations, and notified in the booking office, are delivered within the specified

delivery time, it is normally 24 to 72 hours within India depending on the destination." The trade practice of delivering speed post letters envelopes after 14-15 days i.e. much after the time envisaged in the postal guide, amounts to an Unfair Trade Practice of making false representation concerning the standard, quality, uses and benefits, the need for and usefulness of its postal services attracting the provisions of Clauses (ii), (iii), (iv) of Section 36A(1) of the MRTP Act, 1969."

2. THE matter came up for hearing on 5.11.1996. One Mr. S.M. Arif, Advocate appeared on behalf of the respondent and requested for time for filing the reply, which was not objected to by the DG and the case was fixed for framing of issues on 13.2.1997. On 13.2.1997 nobody appeared on behalf of the respondent and the case was fixed for 30th July, 1997 with direction that if no reply is received by that date, the proceedings will be ex parte against the respondent. On 30th July, 1997 the respondent did not file the reply to the NOE and the proceedings were set ex parte against the respondent. THE following issues were framed : (1) Whether the respondent has indulged or is indulging in the unfair trade practices as alleged in the NOE ? (2) Whether the said unfair trade practices are prejudicial to public interest or interest of the consumer or consumers generally ?

THE case was listed for DG's evidence on 22.12.1997. On 22.12.1997 Mr. R.N. Tatia, Advocate appeared on behalf of the respondent and filed an application for setting aside the ex parte proceedings against the respondent vide order dated 30.7.1997 and to give him an opportunity to file the reply to the NOE. The prayer of the respondent was allowed in the interest of justice and the case was listed for DG's evidence on 20th April, 1998. In compliance of the said order DG filed the affidavit in evidence of his witness and witness was present for cross-examination. Mr. Tatia, Counsel for the respondent did not cross-examine the witness as he admitted that there is no dispute about the facts. Thereafter the respondent was given the liberty to file its evidence on affidavit and the case was fixed for final hearing on 17.8.1998. On that date the respondent could not file its evidence and the case adjourned to 26th October, 1998. On 26.10.1998 the respondent filed his counter- affidavit and the arguments were concluded on 16th July, 1999 and order was reserved.

The averments made in the NOE and the complaint were not denied by the respondent. The respondent in its reply and the evidence has admitted that there was a delay in the delivery of speed post letters and they have sent two cheques for Rs. 31/- and Rs. 56/- incurred by the complainant on speed post to cover up her loss. However, the respondent contended that the complaint is barred under Section 6 of the Indian Post Office Act, 1898, which reads as follows : "Exemption from liability for loss, misleading delay or damage-The Government shall not incur any liability by reason of the loss, mis-delivery of delay of, or damage to, any postal article in course of a 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, mis- delivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default."

3. IT has also been contended by the respondent that the delay in delivery of speed post letters was due to delay in transit and was not wilful or caused fraudulently. So the question of damages to the tune of Rs. 8 lakhs from the respondent does not arise. IT is further submitted that there is no allegation at all on a particular person by whom the delay has been caused fraudulently or by his wilful act or default. Therefore, it has been stated that there is no case of UTP, as alleged, against the respondent. The respondent has also deposed in evidence the same version as has been stated by the respondent in its reply. The informant Ms. Seema Ajwani has deposed in her affidavit that the respondent has refunded to them the amount/fee spent by them on two speed post letters. She has also deposed that they do not wish to pursue the matter.

4. HOWEVER, it is observed that the complainant was considered as an informant and the Notice of Enquiry was issued under Sections 36A, 36B(d) and 36D of the MRTTP Act, 1969 after considering the Preliminary Investigation Report submitted by Director (Research). In the analysis Director (Research) has submitted as under : "As per Post Office Manual, 1992, Speed Post is a guaranteed and fast Mail delivery system of the Department of Post whereby the letter, parcel and packet will be delivered to the addressee within a stipulated time. The service has been made available between specified stations in India and with the other countries. Clauses 3.181 and 3.182 of the said Manual read as under : "3.181. Speed Post-Express Mail Service (EMS) is a guaranteed fast Mail service for letter, parcel and Packet, within a stipulated time, between specified stations in India, and with other countries. Mail for which insurance is compulsory and Value-payable mail are not allowed by Speed Post." "3.182. Guaranteed Delivery - Articles booked before a specified time, known as CUT-OFF TIME, which may be different for different destinations, and notified in the booking office, are delivered within the specified delivery time. It is normally 24 to 72 hours within India, depending on the destination".

In the present case, the informant booked two Speed Post letters on 8.10.1994 for delivery to Gangtok and Siliguri. The respondent did not record the exact time of booking of these letters on the receipt given to the informant. As per the norms of the respondent, the delivery time for Siliguri and Gangtok is third day. Thus these letters should have been delivered to the addressee on or before 11.10.1994. However, the respondent actually delivered these letters to the addressees at Siliguri and Gangtok on 22.10.1994 and 24.10.1994 respectively. So there has been delay of 11 and 13 days respectively in their scheduled delivery time to these respective stations. Thus, the respondent has admitted that they could not deliver the letters within the stipulated time-frame. The reason for late delivery of letters has been mentioned as "service fault". What was the service fault and how has it arisen, the respondent has not dwelt upon. The respondent has further stated in their reply that in case the Department fails

to keep its commitment then it is bound to refund the charges in full. The relevant Clause No. 3.185 in this regard is reproduced below : "Guarantee-For non-delivery within the notified time limit, due to the fault of the service, refund of fee is made at the prescribed rate, on application. But refund is not admissible for delay due to delayed flight, train or other transport, local disturbance or absence of addressee."

5. THE above clause is construed in two parts. THE first part of this clause explicitly states that the Department will refund the fee if the delivery is not affected within the stipulated time due to "faulty service" of the Department but the fee will be refunded on application. THE second part of this clause stipulates that the Department will not refund the fee in those circumstances which are beyond its control like delayed flight or trains, etc.

6. AS indicated above, the Department of Post has refunded the charges in full as it has admitted their service was faulty. But for the faulty service, these letters would have been delivered in time. Though the Department of Post has owned the responsibility for the inordinate delay in delivering the letters yet in their reply, it has not indicated the reasons for the delay. They have merely stated the reason for the delay to be "Service Fault". This plea can only be accepted if it is accompanied with valid reasons. Department of Post should not take shelter under the umbrella of "Service Fault". Further, the complainant has sent a copy of the receipt issued by the Speed Post Office. It is a computerised slip and does not contain the exact time of booking letters and the terms and conditions on which the Speed Post Office accept the letters. The sender remains unaware of terms and conditions on which he or she sends the letters under the so- called "Guaranteed delivery". The sender remains under the false hope that his or her letter or article will be delivered in the stipulated time. Non-disclosure of terms and conditions of acceptance of any article/letter under this service and non-delivery of article/letter in stipulated time without any valid reason amounts to unfair trade practices." We have heard both the parties and observed that the respondent has failed to render satisfactory services as promised and the conduct of the "respondent is held to be unfair attracting the provisions of the MRTP Act and as such the respondent has indulged in unfair trade practices. We also hold that such unfair trade practices are prejudicial to public interest, interest of the consumer or consumers generally. We accordingly pass a "cease and desist" order against the respondent directing the respondent that the respondent shall not indulge in such unfair trade practices in future. In the premises there is no order as to costs. Orders passed.