
(1993) 01 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

MAHENDRA NATH BASAK

APPELLANT

Vs

SUPDT. OF POST OFFICES, BALURGHAT P.O.

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Citation : 1993 1 CPJ 464

Hon'ble Judges : Jyotirmoyee Nag , Sunil Kanti Kar J.

Final Decision : Petition allowed

Judgement

1. THE petitioner is the Secretary of an Institution named "Safanagar High School" P.O. Safanagar, P.S. Kumar gang, District Dakshin Dinajpur. THE petitioner is the Secretary of Safanagar High School opened a Provident Fund Savings Bank Account being No. 500559 in the year 1968 for the teaching and non-teaching staff of the Institution in the Chandgaon, P.O. under Sub-post Patiram. THE Bank Account was transferred to Safanagar Branch Post Office under the Sub-Post Office Gopalgung and thereby the account no. was charged to 985291.

2. THAT by a Circular No. 136-Edn(B) dated, Calcutta 15th May, 1985 from the Director of Secondary Education, West Bengal, the Managing Committee of aforesaid School took a resolution (No.4) on 7.7.87 to transfer the entire amount lying in the Saving Bank account amount from Post Office to Government Treasury at Balurghat. On 2.12.87 the petitioner submitted a petition for withdrawal of entire money of Rs. 1,26,997.03 paise only with a view to deposit the same at Balurghat, Government Treasury. The Post Master of the Safanagar P.O. had entered the entire amount of Rs. 1,26,997.03 paise in the above Provident Fund Pass Book No. 985291 of the Safanagar High School with the official postal seal and signature of the post master Safanagar P.O. and the School authorities was satisfied with such entries in the pass book. The Narendra Nath Basak was the Post Master of Safanagar P.O. during the period when the said amount of Rs. 1,26,997.03p. was deposited in the Safanagar P.O. THAT on 2.12.87 when the petitioner/ Secretary of the School wanted to withdraw the

entire amount as per circular, he was told by the Post Master Nripendra Nath Basak that as such money was not lying with the P.O. Safanagar and said sum of money had to be arranged from Balurghat P.O. in the premises the Secretary petitioner was asked to collect the same on 17.12.87. On 17.12.87 when the said amount of Rs. 1,26,997.03 paise was to be paid by the Post Master to Nripendra Nath Basak the Post Master committed suicide leaving a suicidal note wherein he admit that he had misappropriated money lying in the provident Fund A/c of the "School". The said suicidal note is relied upon by the petitioner.

One Sri S. Bhattacharjee, Asst. Supdt. of P.O. Balurghat sub-division Balurghat lodged a written complaint against Late Nripendra Basak the erstwhile Post Master for misappropriating Government money by suppression of deposit in P.O. Saving Bank Pass Book A/c No. 985291 standing in the name of Safanagar High School Provident Fund Account.

3. AS per the said written complaint a P.S. case No. 12 dated 29.12.87 u/Sec. 409 I.P.C. against late Nripendra Nath Basak was started and a thorough investigation was undertaken. During investigation it transpired inter alia as follows: (1) So long as the account was lying at Chandganj Branch Post Office there was no discrepancy. (2) That at the time committing suicide the deceased Nripendra Nath Basak wrote two letters admitting his misdeed (Page 2 of Police report). (3) The detailed investigation was made and all the pass books, withdrawal slips, suicide note, school record such as cash book, ledger etc. were thoroughly examined and conclusion is drawn that an amount of Rs. 1,19,836.28P. was misappropriated by the deceased Post Master Nripendra Nath Basak, the School Authority is eligible to get the entire amount of Rs. 1,26,996.94P and interest from 1981-82 upto date. (Page 3 middle paragraph of the police report). (4) During investigation it was all established beyond doubt that the deceased post master Nripendra Nath Basak of Safanagar misappropriated an amount of Rs. 1, 19,836.28p from the Provident Fund Account No. 985291 which was deposited by the School Authority of Safanagar High School from time to time (Page 3 last but one para of the police report). (5) That an investigation of the above records it was found that since 1967 to 6.10.87 and the interest earned on the Deposit upto 1980-81 amounted to Rs. 4,97,943.35p and then Rs. 3,70,946.41p was withdrawn by the School Authority leaving a balance of Rs. 1,26,996.94p but the pass book shows that the amount to be paid is Rs. 1,26,997.03P. and thus there was a difference .09 paisa only.

The police report was relied upon by the petitioner. The said case No. CR 3/88 being State v. Nripendra Nath Basak was disposed off and abated by the Court of the Sub-Divisional Judicial Magistrate Balurghat, West Bengal, West Dinajpur on 9.1.92. The said final order was relied upon by the petitioner.

4. THAT after the case has been abated the petitioner made several representation to the concerned postal authorities praying to them to release the said provident fund account as to enable the school authority to deposit the same in the Government Treasury, Balurghat. It has been brought to the notice

of this Commission that the Chief Post Master General, West Bengal Circle had directed the Supdt. Post Office Balurghat West Dinajpur to settle the claim immediately. Such direction was annexed with petition and relied upon by the petitioner. That the petitioner filed the instant complaint being aggrieved by the inordinate delay and dilatoriness in settling the claim of the petitioner's school. That is not releasing the provident fund account so as to enable the petitioner to deposit the same with the Government Treasury, praying for principal sum of Rs. 1,26,997.03 and interest at 18% with effect from Jan. 1988 till Dec. 1992 Rs. 91,437.84 and General damage and compensation of Rs. 50,000/- and expenses for filing the complainant and travel expenses and other Misc. expenses at Rs. 6,500/- total amount claimed is Rs. 2,74,934.87p.

5. THE Postal Authority that is, Supdt. of P.O. Balurghat, Head Post Master P.O. & P.S. Balurghat, the Post Master General Siliguri West Bengal, etc. have been duly represented by their advocate before the Hon'ble Commission and had filed their objection/written statement in the matter.

6. IN the objection/written statement, the Ld. Advocate appearing on behalf of the Postal Authority had stated inter alia as follows: (a) The Commission constituted under the Consumer Protection Act, 1986 has no jurisdiction whatsoever to try the case. (b) The dispute do not come under the purview of the Consumer Protection Act, 1986. (c) The Secretary of the School was in connivance with the deceased Post Master. (d) That the Pass Books are false/forged. (e) The suicidal note is false/forged.

This Commission had gone through the Police Report, the suicidal note, the order of the Magistrate and had examined the Pass Books withdrawal slips and specimen signature. The objection of the Opps. are dealt with categorically hereunder: (a) With reference to the objection (a) & (b) we are of the opinion that it is beyond cavil that "banking" is squarely within the ambit of a service because it has been expressly included in the definition thereof in Clause (O) of the Sub-section (1) of Section 2 of the Consumer Protection Act, 1986. Indeed on this issue there was and can possible be no dispute. Whenever there is any delay or dilatoriness in settling a claim the same would tantamount to a deficiency in service and thus will comes squarely within the ken of Consumer Disputes Redressal Commission.

Regarding the objections c, d and e we are of the opinion that these objections/ points have been gone into by the police who had investigated the matter thoroughly and had examined the probability of connivance, the pass books, the suicide note etc. The police has submitted a final report before a competent Court of law and the fact stated in that final report taking within it sweep the objection (c), (d) and (e) has been judicially noticed by that competent Court of law and there is no necessity to go into the question or facts afresh. The School authority had all along cooperated with the police authority and the postal authority so that investigation might be properly conducted. It is pertinent to note that at the time of such prolonged investigation the postal authority had

every chance and opportunity to raise any point or to include a fresh accuse or to clear their doubts whatsoever.

7. WHEN a fact is judicially noticed, proof of it is not only unnecessary but is also excluded. The doctrine is thus not a mode of proof it narrows the scope of proof. WHEN a judge takes judicial notice of the fact he in effect declares that he will find that fact to exist. It is established beyond doubt that (the misappropriation of the Provident Fund Account) all these had happened due to the wanton and deliberate act of omission and commission on the part of the Post Master late Nripendra Nath Basak and the Postal Authority. If the Government Postal Department could have been a bit careful and on the guard then such misappropriation would not have taken place. It should be remembered that in a banking service which the post office was rendering the bank/post office act as the custodian/guardian of the consumer/public money and a guardian of public money should always be on the guard. There is no shade of doubt that the higher postal authority are also vicariously liable for this misappropriation.

8. IT is pertinent to note that the suicidal note has not been challenged nor the pass book or the withdrawal slip were called forged and challenged by the postal authority during the prolonged investigation. However, the fact remain that the post master committed suicide and it has been admitted even by the Advocate appearing on behalf of the respondent that the post master had played a major role in the affair. IT is evident that there has been a serious latches on the part of the postal authorities who were not on their guard and had not checked the book of accounts and pass books properly. All the pass books, however, bears proper seal and signature of the postal authority. The petitioner before the Commission is the Safanagar High School who had filed the complaint through the pen of their Secretary thus the school and Secretary is not one and the same, person the account was in the name of the School and the secretary was a mere signatory. It is pertinent to note that if the Secretary of the School would have been involved and have actually/personally signed all the withdrawal slips then the post master would not had committed suicide because he could never have been blamed and found guilty. Moreover, a substantial part of the money that was deposited by the school through their Secretary with the postmaster never figured in the books of accounts of the post office.

9. BE that as it may, in case of negligence resulting in delay payment of provident fund, gratuity pension etc. the aggrieved party can successfully maintain an action against the concerned authority before the Consumer Redressal Forum and under such circumstances the complainant will not only get its dues but also interest on the said dues by way of damages (Ref: Girija Sharma's case reported in I (1991) CPJ 530 (RAJ) and II (1991) CPJ 195 (Rajasthan). It is immaterial whether the claim is against the Government or any other organisation. The Government is equally amenable to the provisions of the Consumer Protection Act, 1986. DECISION We order the Supdt. of Post Office West Dinajpur (Dakshin) Balurghat to pay the sum of Rs. 1,26,997.30p along with

18% interest calculated from 1st January, 1988 till 31st December, 1992. The employees who are the beneficiaries of the Provident Fund Scheme cannot suffer on account of misdeed of the Post Master of Safanagar Branch Post Office. The Postal Authorities are bound to pay the said amount. We further direct the Supdt. of Post Office, West Dinajpur (Dakshin) Balurghat to pay an additional sum of Rs. 2,000/- to the petitioner being the cost and compensation awarded in the matter. The sum of Rs. 1,26,997.03p along with the 18% interest and Rs. 2,000/- will be paid to the petitioners within a fortnight from the date of the receipt of the order by the Supdt. of Post Office. Petition allowed.