

(2011) 03 UK CK 0114
In the Uttarakhand High Court
Case No : Special Appeal No. 24 of 2011

Sanjay Kumar Kumiyal and Narendra Singh Gahtori	APPELLANT
Vs	
Uttarakhand Public Service Commission and State of Uttarakhand	RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Contract Act, 1872 — Section 50

Citation : (2011) 2 UC 875 : (2011) 1 UD 148

Hon'ble Judges : Barin Ghosh, C.J.; Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C. J.

1. Response to an advertisement published by the Respondent/Commission entailed the Appellants to sit in the screening test. After the Appellants succeeded, by a letter dated 30th December, 2010, they were asked by the Commission to submit Traditional Application Forms. Appellants posted those Forms through speed post. Thereafter Appellants came to learn that since the postal authority delayed in reaching those Forms to the Commission, Commission did not consider the Application Forms of the Appellants and, accordingly, they were prevented from participating in the further selection process.

2. In the writ petition, Petitioners (Appellants herein) contended that the Commission engaged the postal authority as its agent, and inasmuch as, Petitioners reached to the postal authority, the Forms in question, well in advance, it was inappropriate on the part of the Commission not to accept those Application Forms. The Commission denied having engaged postal authority as its agent for the purpose of collection of those Forms. The only question, therefore, before the writ court, in regard to the challenge thrown to the action of the Commission in not processing the applications of the Petitioners further, was whether the Commission engaged postal authority as its agent for collection

of those Forms or not? A learned Single Judge, who dealt with the writ petition, held against the Petitioners and in favor of the Commission and, accordingly, dismissed the writ petition. While doing so, the learned Judge took notice of the letter of the Commission dated 30th December, 2010 for the purpose of answering the issue raised in the writ petition.

3. Before us, it is not being disputed that apart from the said letter dated 30th December, 2010, there is nothing else on record, from where one can cull out whether the Commission intended to engage or engaged the postal authority as its agent or not?

4. English translation of the relevant portion of the said letter contained in paragraph 2 thereof is as under:

Along with this memorandum, Traditional Application Form (Annexure-A) is being sent to you, which after having been filled completely and correctly with all enclosures should be ensured to have been received in the office of Secretary, Uttarakhand Public Service Commission, Gurukul Kangri, Hardwar, upto 06.00 P.M. on 20th January, 2011 by registered post/speed post or by personally. The Application Forms received after the last date, shall not be accepted in any condition. At the top of the envelope containing the Application Form "Lecturer Government College", cadre and name of the subject, must be indicated.

5. The learned Counsel appearing in support of the appeal contended that though date and time of receipt of the Application Forms had been specified in the letter and in addition to that it was provided that receipt thereafter will not be acceptance of the Application Forms, but the fact remains that there was a direction to submit either by post or personally and, accordingly, it must be deemed that the Commission intended service of the applications upon it through the postal authority within time, if the same had been handed over to the postal authority on time. In this connection, learned Counsel for the Appellants cited the judgment of Hon'ble Supreme Court rendered in the case of Dharendra Kumar v. Superintendent and Remembrance of Legal Affairs, reported in AIR 1954 SC 424 and also the judgment of the Hon'ble Supreme Court rendered in the case of Commissioner of Income Tax, Bihar and Orissa Vs. Patney and Co., . We do not think those judgments have any application in so far as this case is concerned, inasmuch as, those judgments were rendered in connection with Section 50 of the Indian Contract Act, 1872. Section 50 of the said Act applies to performance of any promise. In the instant case, there was no question of performance of any promise since there was no promise at all.

6. In such circumstances, in order to ascertain whether postal authority, in the instant case, could be treated as the agent of the Commission, one has to look into the letter dated 30th December, 2010 for the purpose of ascertaining whether the Commission intended to do so. The letter makes it absolutely clear that the application is to be received in the office of the Commission upto 06.00 P.M. on 20th January, 2011, and if received thereafter the same will not be

accepted in any condition. That makes it abundantly clear that the intention was to ensure that the receipt of the application is made up to 06.00 P.M. on 20th January, 2011 and not any time thereafter. With that, it was stated that the application, thus to be received, may be received through registered post or speed post or by personal service. In other words, it made it absolutely clear that the service to be achieved by the sender, must be achieved within the time but either through registered post or speed post or by personal service. In such circumstances, it does not appear that any intention of the Commission was disclosed in the said letter to engage postal authority as the agent of the Commission. What the letter disclosed was that, the Commission intended that the Application Form be served to the office of the Commission within the time as mentioned, either by registered post or by speed post or by personal service but not through any other mode. In those circumstances, it would be difficult for us to hold that the letter showed an intention of the Commission to engage postal authority as the agent of the Commission in the matter of receipt of the Application Forms in question. There is, therefore, no scope of interference with the judgment and order under appeal.

7. However, before we part, as it appears to us that by using the words "by registered post/speed post or by personally" which were used to communicate that those are the only mode of service and no other mode can be adopted, a confusion was created and, accordingly, many people of the State residing at far-flung places thought that in the event they take recourse to speed post well within time, their applications will be accepted by the Commission. We, accordingly, request the Commission not to write those words in similar letters to be issued in future, instead, if they want to avoid any particular mode of service, to indicate that the said mode of service will not be accepted.

8. The appeal, accordingly, fails and the same is dismissed.