

(1998) 07 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

SUPDT. OF POST OFFICES, GOA DIVISION

APPELLANT

Vs

SHANTADAS J. KUDCHADKAR

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Citation : 1998 3 CPJ 193 : 1998 3 CPR 182 : 1999 1 CLT 48 : 1999 1 CPC 123

Hon'ble Judges : B.N.Krishnan , Y.V.Rao , Mangala Sanes J.

Final Decision : Appeal allowed

Judgement

1. THE appellant was the opposite party in Complaint No. 215/95 and being aggrieved by the direction given by the Consumer Disputes Redressal Forum, North Goa to redirect the parcel to Lafayette Post Office and to pay compensation of Rs. 2,000/- alongwith cost, has preferred this appeal.

2. THE case put forward by the complainant in this complaint is as follows : On May 31,1994 a 5 kgs. parcel. No. 649 containing perishable food items and recorded audio cassettes, was sent by sea mail to Asha Desai, 1210, Vacation Dr. Lafayette, CA 94549, USA.

In March, 1995 the parcel was returned to the Curchorem Post Office as "Unclaimed".

3. THE absence of endorsement by Lafayette Post Office, carrier, particularly that of second notice rubber stamp on the said parcel is a clear evidence that proves beyond doubt the complainant's claim that this parcel neither reached the Lafayette Post Office nor an attempt was made to deliver the parcel to the addressee. Inspite of repeated reminders, the postal department had failed to come forward with any proof to refute the complainant's claim or solve this issue either by redirecting this parcel to the addressee free of charge, or returning it to the complainant free of charge and refunding the postage of Rs. 859/-.

4. THEREFORE, the complainant prayed that the order be passed keeping in mind his legitimate interests as per the provisions of Consumer Protection Act, 1986. This complaint was resisted by the opposite party. That the parcel was sent as

mentioned in the complaint through Curchorem Post Office on 31.5.1994 is admitted. It has been pleaded that it was sent to the Controller of Foreign Mails, Bombay on the very date and it was further despatched to New York for delivering to the addressee. It has been stated later the parcel was received back on 14.3.1995 from New York Post Office with remark "Unclaimed" and the complainant was called upon to take delivery of the parcel but he has failed to take delivery of the same. Whether the parcel reached Lafayette Post Office or not is not within the knowledge of opposite party. The Postal Department contended that the Controller, Foreign Mails has been addressed to enquire, under what circumstances, the parcel had been returned back but it has not received any reply. As per the regulation of postal department, the parcel cannot be returned to the sender free of charge and as such the cost of returning the parcel, necessary postage had to be paid. Accordingly, the complainant was called upon to pay charges of Rs. 411/- and he had failed to pay the same. It is also pleaded that if the complainant received the parcel back the Postal Department is ready to waive its claim for Rs. 411/-. The parties filed their affidavits and the District Forum came to the conclusion that there was negligence on the part of Postal Department and the opposite party was ordered to redirect the parcel to Lafayette Post Office and also to pay compensation of Rs. 2,000/- and cost. It is the correctness of this order that has been questioned by Postal Department in this appeal.

5. DURING the course of proceedings before the District Forum Section 6 of Indian Post Office Act, 1898 was brought to its notice but no finding has been recorded by the District Forum in relation to the maintainability of complaint despite the said section. The section is very clear that Government shall not incur any liability by reason of mis-delivery, delay or damage to any postal article in the course of transmission by Post except insofar as such liability may in express term undertaken by the Central Government and any officers of the Postal Department shall not incur any liability by reasons of the loss, mis- delivery or delay of or damages to any postal article in course of transmission unless he has caused the same fraudulently or by his wilful act or default. It may be noticed it is not the case of complainant that the Central Government has undertaken the liability in respect of mis-delivery or delay of delivery, etc. in respect of transmission of this parcel in express terms. Nothing has been alleged to say that the delay in delivery is on account of fraud or wilful act or default on the part of officers of opposite party. When the complainant has not averred anything to take the matter out of ambit of the prohibition under Section 6 it is clear that no liability could be incurred by Government in relation to the parcel in question.

6. IT may also be noticed that the entire case of complainant is that the parcel did not reach Lafayette Post Office at all and no attempt had been made to deliver the parcel to addressee. That the parcel left India and reached New York is not in dispute. Under what circumstances, it has been returned back cannot be made out from the records available in the case. Eventhough, the Postal Department in this country, has made number of attempts to enquire under what

circumstances the parcel was returned back, it has not got necessary information. As per Regulation No. 14 of General Regulation applicable to the Postal Office in our country, Indian Postal Department is not responsible for the manner in which an article is delivered or returned undelivered if it is done in accordance with the legislation or regulations of the country of destination and the period of detention of undelivered articles is also governed by the internal regulations of the country of destination. In view of this clear-cut provision, there is hardly any scope to hold the Indian Postal Authorities responsible for any negligence on the part of concerned person at destination in delivering it to the addressee. The parcel has left this country and reached New York and again it has found its way back to our country. In the course of written statement, the opposite party made an offer to waive the charges paid by the complainant for delivery of parcel. Even during the course of argument, the complainant refused to take delivery of the said parcel. Therefore, there is hardly any scope for the complainant to complain of any kind of deficiency on the part of Indian Postal Department in rendering its services, even assuming for a moment, that Postal Department undertakes to render the services to the consumers within the meaning of Consumer Protection Act. Therefore, it is clear that District Forum was not right in giving direction to the Postal Department to redirect the parcel back to Lafayette Post Office or in ordering to compensate the complainant. In the result, the order of the District Forum is set aside and the complaint shall stand dismissed and the appeal is allowed. The parties are directed to bear their own costs throughout. Appeal allowed.