

(1996) 08 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT OF POST OFFICES

APPELLANT

Vs

UPOVOKTA SURAKSHYA PARISAD

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Citation : 1996 2 CLT 559 : 1996 3 CPJ 105 : 1997 1 CPC 246 : 1997 1 CPR 11

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi ,
S.P.Bagla J.

Final Decision : petition allowed

Judgement

1. THIS Revision Petition No. 799 of 1990 is against Order No. 7, in Consumer Disputes Appeal No. 256/92 dated 21st February, 1995 of the State Commission, Orissa and has been preferred by the Superintendent of Post Offices and Ors., as petitioners before us. The Upovokta Surakshya Parisad is the respondent.

2. THE State Commission vide their order dated 21st February, 1995 dismissed the appeal against the order of the District Forum, Balasore. THE complaint before the District Forum was filed by the Vice-President of the Upovokta Surakshya Parisad, Rupsa, alleging deficiency in service by the respondents in delivering the postal covers of a consumer, namely Bikram Kumar Giri, sent by the Industrial Training Institutes of Phulbani and Hirakud intimating about his admission to the said institutions. After hearing the complaint, the District Forum found that the ITI, Phulbani sent an intimation on 27.8.91 which reached at Anko Post Office on 30.8.91. However, the same was stamped by the Post Office on 4.9.91 and delivered to Bikram Kumar Giri on 6.9.91 whereas the last date of admission was 31.8.91. Shri Giri received another intimation from ITI, Hirakud which was dispatched on 31.8.91, received in the Anko Post Office on 4.9.91 but delivered to him on 8.9.91 whereas the last date of admission was 9.9.91. THE complaint was filed against the following opposite Parties : (1) THE Superintendent of Post Offices; (2) Assistant Superintendent of Post Offices; and (3) Shri Akshya Kumar Misra, peon, Anko Post Office.

The opposite party No. 2 remained exparte before the District Forum whereas

the opposite party Nos. 1 and 3 filed their versions separately. The opposite party No. 1 has not denied the facts that at the Phulbani intimation was received at the Anko Post Office on 30.8.91 but was stamped on 4.9.91 and delivered to the addressee on 6.9.91. The postal cover from Hirakud was received in Anko Post Office on 4.9.91 and delivered on 8.9.91 at 4.00 p.m. without impressing any date stamp thereon. Later, however, Shri Akshay Kumar Misra gave another statement saying that all what he had stated earlier was only to help Shri Bikram Kumar Giri to secure admission even after the expiry of the date of admission.

The usual argument of the Postal Department has been that they enjoy complete immunity from any action, whatsoever, for any loss, mis-delivery, delay or damage to any postal article in course of transmission by post under Section 6 of the Indian Post Office Act, 1890. For facility of reference this section is reproduced : "6. The Government shall not incur any liability by reasons of the loss, mis-delivery or delay of, or damage to any postal article in course of transmission by post except in so far 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 or default."

3. THE District Forum came to the conclusion that there was a wilful act of default in not delivering the letters to Shri Bikram Kumar Giri in time, with the result that he could not get admission in the ITI's. As he had not applied for admission to any other institution, being confident of getting a seat in either of the two ITIs, he lost one year of his educational career. Shri Bikram Kumar Giri did not make any complaint before the District Consumer Forum, though, he had complained to the Superintendent of Post Offices who had conducted an inquiry and obtained the written statement admitting the fact of delay by the Peon, Shri Akshaya Kumar Misra. Shri Bikram Kumar Giri did not ask for the withdrawal of the complaint filed by the Upovokta Surakshya Parishad either. Based on these facts, the District Forum, Balasore awarded a compensation of Rs. 2,000/- to Shri Bikram Kumar Giri to be paid within one month of the receipt of their order and also costs fixed at Rs. 100/- to the complainant. In appeal, this order of the District Forum was upheld by the State Commission, Orissa by a brief order saying that there was no merit in the appeal, which, accordingly, was dismissed by them. In a number of cases we have noticed that the Postal Department has been taking shelter under the provisions of Section 6 of the Indian Postal Act which were enacted as far back as 1890 when the then Government of the day acquired total immunity for any action of the Postal Department resulting in a loss to the consumer. In fact, through this section, the then Government made the Postal Department totally immune from any accountability to the people whom it was serving for consideration, even if such service was subsidised in respect of certain categories of letters and postal articles etc. This provision made in 1890 in the Indian Postal Act is totally antiquated and out of tune with the spirit of a democratic Government in a parliamentary system where all

actions of the Government functionaries are subject to scrutiny and all such functionaries are accountable for any lapse or misdeed on their part in the discharge of their duty. We, therefore, feel that it is time that a comprehensive review of the Indian Postal Act is undertaken so as to incorporate suitable amendments and modifications to bring it in tune with the functioning of a democratic and accountable Government.

4. IN the present case, however, what we find is that even under the provision of Section 6, as it is, there is a patent default on the part of the Postal Department based on the admission of the peon that the letters were stamped late and delivered late resulting in a loss of one year in the educational career of the recipient. Not doing something what one ought to do is also an act of Will and, therefore, covered by "wilful act" mentioned in Section 6 as one of the circumstances, where, the liability can be fixed on the Postal Department and its functionaries. We, therefore, see no merit in this revision petition. However, we feel that the compensation of Rs. 2,000/- is somewhat on the higher side taking into account the attending circumstances to Rs. 1,000/- and to this extent this petition is allowed. We also fix costs to be paid by the Petitioner to the Respondent at Rs. 200/-. Revision petition allowed with costs.