
(2012) 04 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

Superintendent Of Post Offices Bangalore South Division

APPELLANT

Vs

Manjit Kaur Sodhi

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 122 : 2012 2 CPJ 427 : 2012 2 CPR 338

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Final Decision : Application stands disposed of

Judgement

1. IN this revision there is challenge to order dated 19.07.2011, passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short as "State Commission "). Vide impugned order, appeal of the petitioners challenging order dated 16.11.2010, passed by District Consumer Disputes Redressal Forum, Bangalore (for short as " District Forum ") was dismissed.

2. ALONG with the petition, an application seeking condonation of delay of 85 days, has also been filed. Brief facts are that respondent/complainant booked a parcel containing wedding material at Jayanagar East Post Office, Bangalore. The said parcel did not reach its destination i.e. Jalandhar. Respondent complained to Jayanagar East Post Office and approached them many times. Petitioners/O.Ps informed her that parcel was misplaced, for which they offered her refund of Rs.240/-, being double the amount of the freight charges. However, respondent declined to accept the same as the parcel was worth Rs. 14,727/-. Hence, respondent filed complaint before the District Forum seeking compensation of Rs. 14,727/-.

3. PETITIONERS in their defence version took the plea that respondent is only entitled to double the speed post charges for the loss of articles. A cheque of Rs. 240/- was issued to the respondent on 25.5.2010, which was refused by her. A letter mentioning that article lost in transit, was again sent to the respondent on 09.06.2010. The speed post article were not insured. Respondent is only entitled for compensation amounting to double the charges. Further, as per Section 6 of the Indian Post Office Act, 1898 (for short as " Act ") petitioners can not incur

any liability by reason of loss, mis-delivery or delay of, or damage to any postal article in the course of transmission by post.

4. DISTRICT Forum, while allowing the complaint, passed the following order;- " Theopposite parties jointly and severally directed to pay compensation of Rs. 15,000/- to the complainant within 45 days from the date of this order. In the event of non-compliance of the order within 45 days the above amount carries interest at 6% p.a. from the date of this order till payment realization. The complainant is also entitled for Rs. 2,000/- as cost of the litigation from the opposite parties ".

Aggrieved by order of District Forum, petitioners filed an appeal before the State Commission, which dismissed the appeal.

5. THIS is how much the matter has reached before this Commission.

6. FIRSTLY , we shall take up the application for condonation of delay. It is contended by learned counsel for the petitioners that petitioner is a Govt. Department and it takes time to get necessary sanction for filing the revision. The delay, if there is any, it is due to administrative reasons and same may be condoned.

7. FOR the reasons mentioned in the application, we find that there are sufficient grounds for condoning the delay. Accordingly, delay is condoned and application stands allowed.

8. NOW coming to the merits, it is contended by learned counsel that respondent had not disclosed the contents of the parcel at the time of booking, which she ought to have disclosed. Other contention is that as per Rules and Provisions laid down in Section 6 of the Act, respondent is entitled only to double the amount of the loss of ordinary speed post article. In support, learned counsel relied upon a decision of this Commission, Head Post Master, Post Office Railway Road Kurukshetra, Haryana & Ors. Vs. Vijay Rattan Aggarwal (RP No. 15 of 1997) decided on 18.9.2002.

9. IT is an admitted case of the parties that parcel in question was sent by the Speed Post but it did not reach the addressee.

10. AS per petitioners " defence, parcel in question has been lost. In this regard, it would be relevant to refer to the defence taken by petitioners in para 3 of their written statement, which reads as under ; " 3.The complainant preferred a complaint on 12/12/2009 regarding the status of the speed post article. The complainant was in touch with respondents and the respondents were updating the developments over phone. A detailed enquiry was made with Jalandhar Speed Post Centre. After enquiries, the Model Town Post Office intimated that they have not received. Under those circumstances, speed post articles is treated as lost in transit. Accordingly reply was given to the complainant on 04/05/2010, but the complainant refused to receive the said letter. Further complainant was informed to claim the eligibility for compensation ".

As per petitioners own case, a detailed enquiry was made with Jalandhar Speed Post Centre and after enquiries, Model Town Post Office intimated that they have not received the parcel. This fact has been corroborated by petitioners " own witness Mr. V. Tara, Manager, who in his evidence has sated that " detailedenquiry was made with Jalandhar Speed Post Centre. After enquiries, the Model Town Post Office intimated that they have not received. Under those circumstances, speed post article is treated as lost in transit ".

11. THAT enquiry report on which, petitioners " defence is based and the same was a material piece of evidence, has neither been placed nor proved on record. As per petitioners own case, speed post parcel booked at Balgalore has reached at its destination i.e. Jalandhar Speed Post Centre and thereafter, it was dispatched to Model Town Post Office, Jalandhar. It is the Model Town Post Office, which intimated that article has not been received by it. However, the intimation sent by Model Town Post Office with regard to non-receipt of the parcel has not been placed or proved on record.

12. FURTHER , there is nothing on record to show that any action had been taken by petitioners against its delinquent officials. Merely taking the plea that article has been lost in transit is of no help to the petitioners. They have to establish about the actual loss of the article and also to prove as to at the which point or place, the article in question was lost but the same has not been done in this case. Statecommission in impugned order has observed; "Admittedly, the parcel sent by the respondent/complainant containing wedding material could not reach the destination, this fact is not disputed by the appellant/OPs. Nothing prevented the appellants to insist the respondent to disclose the contents of the parcel at the time of accepting the said parcel. But, no such efforts have been made by the appellants. Admittedly, the respondent/ complainant has produced the receipt before the DF for having purchased the wedding saree to be sent it to Jalandhar. If that is so, we are of the view that the decision rendered by the DF as per its impugned order is proper and correct. It does not call for any interference. This appeal is liable to be dismissed. "

13. THUS , the decision of Head Post Master, Post Office Railway Road Kurukshetra (supra)is not applicable to the facts of the present case.

14. THIS Commission in case of Superintendent of Post Offices v. Upuovokta Surakshya Parishad, 1997 (I) CPR II (NC) has observed as under ; " In a number of cases we have noticed that the postal department has been taking shelter under the provision of Section 6 of the Indian Postal Act which were enacted as far back as 1898 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 letters and postal articles etc. This provision made in 1898 in the Indian Postal Act is totally antiquated and out of tune with the spirit of a

democratic Government in a parliamentary system where the 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 . "

In *Senior Post Master, GPO v. Harjinder Singh* (1986-95 Consumer 1293 NC) this Commission observed ; "Section 6 of the Indian Post Office Act does not operate to preclude claims for compensation being made against the postal department for non-delivery of articles dispatched by SPEED POST because the postal department undertakes to deliver the articles within specified period of time in consideration thereof a substantial extra charge is levied. Thus, the appellant was under a special obligation for quick delivery of such a letter ".

15. IT is well settled that under Section 21 (b) of the Consumer Protection Act, 1986 scope of revisional jurisdiction are very limited.

16. SUPREME Court in *Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.* 2011 (3) Scale 654 has observed ; " Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora ".

Thus, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Consumer Protection Act, 1986, since two fora below have given cogent reasons in their orders, which does not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction.

17. IT is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

18. PRESENT revision petition having no merits and the same being without any legal basis, is hereby dismissed with costs of Rs.10, 000/- (Rupees Ten Thousand only). Petitioner is directed to deposit the costs of Rs.10,000/- (Rupees Ten

Thousand Only) by way of demand draft in the name of "Consumer Legal Aid Account " within four weeks from today.

19. IN case, costs are not deposited within the prescribed period, then petitioner shall be liable to pay interest @ 9% p.a., till realization.

20. PENDING application stands disposed of. List on 25th May, 2012, for compliance.