(2009) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Union of India and Ors. APPELLANT

Vs

Achintam Kilikdar RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Citation : 2009 4 CPJ 97

Hon'ble Judges : ASHOK BHAN , B.K.TAIMNI J.

Advocate : D.S.MEHANDRU , BHUPENDER YADAV , Debaleena Kilikdar

Judgement

1. MR . Justice Ashok Bhan, President -Union of India and others petitioners herein, who were the opposite parties before the District Consumer Disputes Redressal Forum, West Tripura District, Agartala (hereinafter referred to as the District Forum'' for short), being aggrieved by the Order dated 22.2.2005 passed by the State Consumer Disputes Redressal Commission, Agartala, Tripura (hereinafter referred to as the State Commission'' for short) in First Appeal No. 16 of 2004, have filed the present Revision Petition. By the impugned Order, the State Commission has confirmed the Order passed by the District Forum. The District Forum by the impugned Order had directed the petitioners to pay a sum of Rs. 50,000 to the respondent/complainant by way of compensation and Rs. 15,000 towards the cost of medicine. The above amount was directed to be paid along with interest @ 9% p.a. with effect from 29.9.2003 failing which the rate of interest would be 12% p.a.

2. BRIEFLY stated, the facts of the case are: Respondent/complainant filed a complaint before the District Forum alleging that his father, late Shri Bijay Kanti Kilikdar, who was a serving Judicial Officer, had undergone a kidney transplant in the year 1997 and, as per medical advice, he was required to take Cyclosporing Saudium Neoral (25 mg.) which is an imported medicine and is distributed in India by Novarits India Private Limited, Chennai. According to him, the said drug is a life saving drug, which his father was taking regularly. Any interruption in taking the said drug, even for a day, can be dangerous to life. That his father had sent a sum of Rs. 10,758 by a demand draft bearing No. 416271 dated

29.4.2003 to Novarits India Private Limited, Chennai for two packets of 50 mg. Saudium Neoral and three packets of 25 mg. Saudium Neoral and the said company, after having received the demand draft, despatched the said medicines by speed post parcel on 3.4.2003 to him at Agartala. On receipt of the intimation of arrival of the speed post parcel, the father of the respondent sent one of his representatives to Agartala Head Post Office on 19.5.2003 to receive the parcel. On inspection, it was found that the parcel was severely damaged and there was a big hole and the parcel contained plastic flowers and leaves. No medicine was received in the packet. As the medicine was not received, a complaint was lodged with Director, Postal Services and the Post Master, Agartala Head Post Office on 20.5.2003 through an Advocate and in response to the said complaint, the Deputy Superintendent, Office of the Director, Postal Services requested the Post Master to take necessary action as per Rule and also directed him to make necessary disposal of the article. Thereafter, the respondent was contacted over telephone and was requested to take delivery of the said damaged packet. On 23.5.2003, respondent along with two other persons went to Agartala Head Post Office and made a request to the Postal Authority to prepare an inventory of the articles received. Accordingly, an inventory was prepared in which it was recorded that the contents of the speed post parcel were plastic flowers, leaves and cash memo issued by Novartis India Private Limited, Chennai. There was no medicine inside the speed post parcel. Thereafter, the respondent served a Notice on 6.6.2003 claiming a compensation of Rs. 1,11,773.

3. PETITIONER S entered appearance and filed their written statement. It was admitted that the speed post parcel did not contain any medicines. It contained only plastic flowers, leaves and a cash memo issued by Novartis India Private Limited, Chennai. It was submitted that the Postal Department or the Post Office is not concerned with the contents of the parcel and if the parcel contained valuable material, it should have been sent under insured post. In the event of loss of domestic speed post parcel or loss of its contents or damage to the contents, compensation of Rs. 1,000 only could be paid to the sender. As per Section 6 of the Indian Post Office Act, 1989, Government does not incur any liability by reason of any loss, misdelivery or delay of, or damage to any postal article in the course of transmission by post except insofar as any liability is undertaken in express terms. That the payment of compensation, as has been claimed by the respondent, did not arise at all in view of the specific provisions of Section 6, it is liable to pay compensation at a fixed rate, in case of default in service. District Forum, after taking into consideration the pleadings and evidences filed by the parties, allowed the Complaint and directed the petitioners to pay Rs. 50,000 towards compensation and Rs. 15,000 towards cost of medicines with interest @ 9% p.a. with effect from 29.9.2003 failing which the rate of interest will be 12% p.a.

4. AGGRIEVED against the Order passed by the District Forum, the Postal Authorities, i.e., petitioners as well as respondent filed appeals before the State Commission. State Commission, by the impugned Order, has dismissed both the

appeals.

5. LEARNED Counsel appearing for the petitioners, relying upon a decision of 3 -Member Bench of this Commission in Revision Petition No. 15 of 1997, Head Post Master, Post Office Railway Road, Kurukshetra, Haryana and Others v. Vijay Rattan Aggarwal, submits that the liability of the petitioners to pay the compensation is limited to Rs. 1,000 only and the findings recorded by the Foras below to the contrary, are illegal and without jurisdiction.

6. SECTION 6 of the Indian Post Office Act, 1989, reads as under: "6. Exemption from liability for loss, misdelivery, delay or damage -The Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except insofar 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."

7. THE 3 -Member Bench, after an elaborate discussion and after taking into consideration the provisions of Section 6 of the Indian Post Office Act, 1989, held as under: "Section 6 of the Post Office Act has been interpreted by this Commission in the case of Senior Post Master, G.P.O., Pune v. Akhil Bhartiya Grahak Panchayat and Anr., II (1995) CPJ 230 and in the Post Master, Imphal and Ors. v. Dr. Jamini Devi Sagolband, I (2000) CPJ 28. Section 6 exempts Post Office from any liability for loss misdelivery, delay or damage of any postal article in course of transmission by post, except to such extent as the liability may be undertaken by the Government in the express terms. As officer of the Post Office, is similarly exempted from any liability unless he has caused loss, etc. fraudulently or by his wilful act or default. Based on Post Office Act and the Rules argument of Mr. B.K. Agarwal and Mr. Sunil Sharma, Counsel for the Post Office is quite simple and that no compensation is payable outside these rules. Mr. Vishnu Mehra, learned Counsel, however, submitted that one has to see the background under which section of the Post Office Act has been enacted. According to him, scheme of Speed Post is a departure to which Section 6 would not be applicable. He said first part of Section 6 deals with complete immunity of the Government from any liability. But second part would be application regardless of any scheme under which postal article is sent. He, therefore, said that Postal Authorities cannot claim absolute immunity in respect of Article sent by Speed Post. Mr. Mehra said even if it is assumed, Postal Authorities are entitled to immunity under the first part of Section 6 of the Post Office Act, they are not so entitled on the facts of these cases before us as it was a clear case of default on their part. We do not think we would agree wholly to submission of Mr. Mehra. He is right to the extent that no officer of the Post Office can escape liability over any loss, misdelivery, delay or damage to the postal article when it has been caused by him fraudulently or by wilful act or default. This part of Section 6 will certainly apply when article is also sent by Speed Post. However,

there is no allegation of any fraud, wilful act or default against any of the officers of the Post Office in the present case. Scheme of Speed Post has been provided under Indian Post Office Rules of 1933 by inserting Rule 66B. As noted above, these Rules are statutory. Complaints regarding any article booked under Speed Post (including demand for refund of fees in cases of non -delivery of articles within the stipulated time) are to be preferred within three months from the date of booking of the articles. Rule 66B further amended by inserting two more sub -rules which provided that in case of delay of Speed Post article beyond the norms determined by the Department of Posts from time -to -time compensation will be provided which shall be equal to composite Speed Post charges paid. It also provided that in the event of loss of speed Post article or loss of contents or damage to the contents, compensation shall be double the amount of composite fee Speed Post charges paid or Rs. 1,000 whichever is less. It would be thus seen that maximum compensation fixed is Rs. 1,000 which can be granted when there is a loss of Speed Post article or loss of its contents or even damage to the contents. Norms to which reference has been made have been provided in the circular dated 22.1.1999. Under Rule 83 letters or parcels containing coin, bullion, currency notes, etc. are to be sent by post only in insured covers. Under Rule 83A when a letter or parcel contains Government currency notes, bank notes, gold coins, etc. sender has to declare on the article the value of the contents and the time of despatch."

8. IT is no doubt that an Officer of the Post Office cannot escape liability over any loss, misdelivery, delay or damage to the postal article when such loss or misdelivery is caused by him fraudently or by an wilful act or default. There is no allegation of any fraud, wilful act or default against any Officer of the Post Office in the present case.

9. THIS apart, in our considered view, respondent would not be a consumer'' within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. Consumer'' explained under Section 2(l)(d) is defined to mean: "(d) consumer'' means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;"

(Emphasis supplied)

10. IN the present case, it is Novarits India Private Limited who had engaged the services of the petitioners for a consideration to deliver the parcel containing medicines sent by it to the respondent. Respondent had not engaged the services of the petitioners on payment of any consideration. Prima facie, respondent would not be a consumer'' within the meaning of Section 2(l)(d) of the Consumer Protection Act, 1986. Under Section 2(l)(d)(ii), a beneficiary of service, other than the person who hires or avails of the service for consideration, would fall within the definition of consumer'' only when such service is availed of by the hirer with the approval of the beneficiary of the service for a consideration but does not include a person who avails of such service for commercial purpose. Nothing has been brought on record to state that the services of the petitioners had been hired by Novarits India Private Limited, Chennai with the approval of respondent/complainant.

11. SINCE , the point, as to whether the respondent was a consumer'' or not, had not been taken up before the Fora below and the case of the petitioners was that their liability was restricted to a fixed amount, we allow this Revision Petition in part and restrict the compensation required to be paid by the petitioners to the respondent to Rs. 1,000 in terms of the judgment of the 3 -Member Bench of this Commission in Vijay Rattan Aggarwal case (supra) in Revision Petition No. 15 of 1997.

12. THE Revision Petition is disposed of in above terms with no orders as to costs. R.P. partly allowed.

