

(1999) 10 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : CIMA No. 145/1996

Union of India and others

APPELLANT

Vs

Mohammad Ashraf and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 17

Citation : (2000) KashLJ 67

Hon'ble Judges : Bhawani Singh, C.J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : S.Manzoor, S.A.Naik, Advocates appearing for the Parties

Judgement

Bhawani Singh, Chief justice.

This Appeal is directed against the order of Jammu and Kashmir State Consumers Protection Commission (hereafter for short Commission) dated

July 01,1996 arising out of the Complaint No. 7/1992.

Complainant states that after obtaining Law Degree, he prepared himself for Indian Administrative Service Examination. He worked hard and

burnt mid night oil, purchased lot of reading material of various kinds by spending lot of money on them and for coaching. When opportunity came,

he got application form, purchased Cross Indian Postal Order for Rs. 307 in favour of Union Public Service Commission and registered the post

on January 22,1992.

When he did not receive anything from Union Public Service Commission, he ascertained the matter from General Post Office, Srinagar where he

was told that the letter had been registered against No. 2765 dated 22 11992 and was forwarded to Delhi for delivery. Later, he received

communication from Union Public Service Commission dated 24/1/1992 stating that his application could not be entertained as it was received on

5/2/1992, when the last date for receipt of application was 3/2/1992.

Complainant alleges that by the callous and negligent act of the respondents in the discharge of functions, he has been deprived of the last chance

for appearing in the examination at the cost of hard work and huge expenses. But for the culpable negligence of the respondents, this loss could not

have been there.

Respondents' case is that there had not been intentional delay in the delivery of letter and whatever has happened, that was due to circumstances

beyond their control. The letter was packed for final dispatch in T. B. 1/2 for Palam TMO on 24/1/1992. It could not be sent by Airlines, since the

authorities were not accepting the mail since 16/9/1991 due to security reason and the mail was being sent to Jammu through surface transport and

thereafter by Railway Mail Service. It is pointed out that road remained blocked from 24/1/1992 to 31/1/1992 and State Road Transport

Corporation Crew lifted the mail on 12/2/1992 after the traffic was restored on the highway. Complainant should have sent the application through

Speed Post, a facility available at General Post Office. Immunity from liability has been placed under Section 6 of the Indian Post Office Act,

1898 for loss, misdelivery, delay or damage to any postal article in the course of transmission.

Commission examined some witnesses and decided the case in favour of the complainant and against the respondents by ordering compensation of

Rs. two lac for irreparable loss and injury caused to him due to deficient service by the respondents after holding that respondents were guilty of

negligence and dereliction of duty and protection of Section 6 and provisions of Indian Post Office Act, 1898 was not available on the evidence in

the case.

Heard learned counsel for parties. Section 6 of Indian Post Office Act, 1898 reads:

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 in so far as such liability may in express terms be undertaken by

the Central Government as hereinafter provided; and no office 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 willful act or default.

8. It is necessary to quote the definition of deficiency in Jammu and Kashmir State Consumers Protection Act, 1987 :

Any default, imperfection, short coming, or inadequacy in the quality, nature and manner of performance which is required to be maintained by or

under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to

any service.

9. There is no quarrel so far as definition of deficiency is concerned. The question is whether facts of the case pointed out any deficiency on the

part of the respondents in extending the service. Similarly, for burdening the respondents with liability under Section 6 of the Indian Post Office

Act, 1898, it has to be proved that the loss, misdelivery or delay or damage to any postal article in the course of transmission by post was the

result of fraudulent or willful act or default of the respondents. For appreciating both the provisions, evidence has to be examined carefully.

Complainant should have been extravigilant for sending his application, in case he was really interested to appear in that examination. When

National Highway from Srinagar to Jammu closes for traffic due to heavy snowfall or land slides, every one comes to know of it through media or

otherwise. Complainant should have known it. It is rightly submitted by Appellants' counsel that he should have sent the application through Speed

Post, a facility available at General Post Office, Srinagar and the complainant admits that he does not know what Speed Post is. Further, learned

counsel for Appellants places before us Confidential Proceedings of Post Master General, Srinagar dated 18/9/1991, which demonstrate that after

joint meeting of DIG, Airport (Security), DIG, Security, Srinagar, Station Manager, Indian Airlines, it was decided to discontinue dispatch of Air

Mail from Srinagar Airport to Delhi for security reasons and it was decided to send the mails to Jammu by surface and there from to Delhi by

Air/Surface. Further, Appellants also produced certificate from Manager, SRTC through witness that National Highway was blocked from

24/11/1992 to 31/11/1992 due to heavy landslides as per office records. This

document has been erroneously rejected by the Commission, instead reliance has been placed on the certificate of Station Manager, Indian Airlines, Srinagar Airport dated 20/9/1993 that mail was not refused. This certificate is unsatisfactory, since it does not reflect the correct position as per Proceedings of PMG, Srinagar dated 18/9/1991 in which Station Manager, Indian Airlines participated. It appears, Manager, Indian Airlines, Srinagar Airport did not know about the meeting dated 18/9/1991.

There is also statement by witness Abdul Rashid, Sorting Assistant, GPO, Sorting Office, Srinagar that list of all the registered letters and articles sorted out was prepared. The total number of 1st Class Registered Letters was 143 on that date and the number of complainant Registered Letter was 2765. All of them were sent by the same dispatch. List of these letters is filed. Reading all the material together, we have no manner of doubt that the Appellants did not commit wilful default in the transmission of the document. It was received on 22/1/1992. Road was closed from 24/1/1992 to 31/1/1992. Mail was dispatched on 12/1/1992 from Srinagar to Jammu. It was received on the same day and sent to Delhi on 22/1/1992 where it reached on 4/2/1992. It was delivered on 5/2/1992. With this background, it cannot be said that there was any kind of willful default or delay on the part of Appellants in dealing with the matter. With respect to delivery by Air, matter has already been discussed.

Commission order has been perused carefully. We find that Commission has not appreciated the matter correctly. Dependable and satisfactory evidence produced by the Appellants has been rejected for unjustifiable reasons and that of complainant accepted, though it was infirm and discrepant, with the result that conclusions, which are not in consonance with provisions of law applicable in this case, have been drawn.

Therefore, this Appeal is allowed, Complaint No. 7/1992 is dismissed.

Cost on parties.