

(1994) 02 NCDRC CK 0030

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

A.IGNATIUS JULIAN

APPELLANT

Vs

Passport Officer

RESPONDENT

Date of Decision: Feb. 14, 1994

Citation: 1994 3 CPJ 321 : 1995 2 CPR 108

Hon'ble Judges: S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision: Complaint dismissed

Judgement

1. THIS is a complaint under Sec. 17 read with Sec. 12 of the Consumer Protection Act.

2. THE complainant applied for a passport on 7.10.91 and paid a fee of Rs. 70/-. THE police enquiry was over in the month of November, 1991. Subsequently on 16.9.92 the complainant was asked to produce two more copies of photographs. He sent 3 attested copies and 2 unattested copies of photographs by registered post on 7.10.92. THE complainant received another letter on 3.2.93 for furnishing photographs without any marking. He sent them by registered post on 27.2.93. THERE was no response and issued a suit notice on 15.9.93. He finally received passport on 14.10.93. THERE was deficiency of service and hence the claim for damages in the sum of Rs. 10,00,000/-.

The opposite party contended that the complaint is not maintainable under the Consumer Protection Act. The services rendered by the passport office are merely statutory and there is no contractual liability and it does not come within the purview of the Act. It is further contended that Sec. 16 of the Passport Act of 1967 is a bar to

the maintainability of any claim against the Government or any officer or any authority for anything which is in good faith done or intended to be done under the Passport Act. On merits, it is contended that the application was received on 7.10.91 and the passport was prepared and signed on 20.6.92. It was subsequently found that the photographs of the complainant were missing and the complainant was requested on 27.6.92 to send his photographs. There was no response. Another communication was sent on 16.9.92. The complainant sent 2 photographs" on 7.10.92 pasted on separate sheets signed by Gazetted Officer with date stamp affixed on the face of the photographs. These photographs could not therefore be used. A fresh communication was sent to the complainant on 2.93 for sending passport size photographs without any attestation and they were received on 24.2.93. They were affixed in the passport already prepared and sent to the complainant. The delay was not wilful. The claim of compensation is unconscionable.

Exhs. A1 to All are marked.

3. THE points that arise for determination are:

(1) Whether the complaint is maintainable under the Consumer Protection Act? (2) Whether the claim is barred in view of Sec. 16 of the Indian Passports Act? (3) Whether there has been any deficiency of service or negligence on the part of the opposite party and to what compensation, if any, is the complainant entitled?

Point No. 1: It is contended on behalf of the opposite party that he has been performing the statutory functions under the Passport Act and is not rendering any service within the meaning of Consumer Protection Act and the complaint is not maintainable. The argument is no longer available in view of the latest landmark judgment of the Supreme Court in Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC) where the learned Judges have held that the word "service" has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal statutory etc. The Supreme Court went further to observe that:

"A Government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. Truly speaking, it would be a service to the society if such bodies instead of claiming exclusion, subject themselves to the Act and let their acts and omissions scrutinised, as public accountability is necessary for healthy growth of society."

We therefore hold that the Consumer Protection Act is applicable even in respect of acts done under statutory provisions like the Passports Act and answer of this point

is in favour of the complainant.

4. POINT No. 2: The opposite party relies on Section 16 of the Passports Act of 1967 and contends that merely on the ground that there has been delay in issuing the passport, no claim can lie unless the delay is not in good faith and was malafide. Sec.16 runs as follows:

"Section 16: Protection of action taken in good faith:- No suit, prosecution or other legal proceedings shall lie against Govt, or any officer or authority for anything which is in good faith done or intended to be done under this Act."

This Section provides immunity against the Government and any officer or authority for anything which is in good faith done or intended to be done for this Act. Sec. 3(2) of the General Clauses Act of 1897 lays down that,

""act" used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions."

In AIR 1955 Patna 432(434) a Division Bench of the Patna High Court has held that the expression "anything done under this Act" used in Section 146 Bihar Local Self Government Act, 1888 includes, in it "anything omitted to be done under the Act" by virtue of this Clause (2) of Section 3 of the General Clauses Act of 1897. Section 16 of the Passports Act of 1967 therefore applies not only to acts, done but also omissions that is delay caused by the officials concerned, where such omission or delay is made in good faith. Sec. 3(22) of the General Clauses Act of 1897 lays down that

"a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;"

According to the complainant, the officials of the opposite party have acted negligently and have been lethargic in the issue of the passport. There is absolutely no allegation that there was malafide or dishonesty on the part of the officials of the passport office. The delay in the grant of the passport must therefore be deemed to have taken place in good faith as there is no allegation of dishonesty, irrespective of the fact, whether there has been any negligence or not. Sec. 16 of the Passport Act is therefore a bar to the maintainability of this complaint. This point is answered against the complainant.

Point No. 3: In view of our finding on point No. 2, there is no need to go into the question of any deficiency of service.

In the result, the complaint fails and is dismissed, but without costs.

5. BEFORE parting with this case, we would like to point out that in the instant case, the complainant has applied for passport on 7.10.91 and the opposite party has issued the passport on 14.10.93 after more than 2 years and 7 days. This is extra-ordinary and unconscionable. Instead of taking refuge under the immunity clause, it would be better if the officials of the passport department act diligently and pass necessary orders on the application for passports within a period of 90 days. It is represented that the delay in issuing of passport is due to inadequacy of staff to process the ever increasing member of applications for passports. We suggest that the Government of India shall take all necessary remedial measures so that people who are entitled to passports will be able to get the passports within 90 days. A copy of this judgment will be forwarded to the Secretary, Ministry of External Affairs, New Delhi for information and necessary action. Complaint dismissed.