

(2001) 04 NCDRC CK 0012

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

POST

MASTER,G.P.O.,PATNA

APPELLANT

Vs

PRATEEP KUMAR

RESPONDENT

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Date of Decision: April 16, 2001

Citation: 2001 3 CPJ 306

Hon'ble Judges: A.N.Chaturvedi , C.R.Venkataraman , Asma Ahmad J.

Final Decision: Appeal allowed

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Judgement

1. THIS appeal by the opposite party is directed against an order dated 26.9.1994 passed by District Forum, Patna, in Complaint Case No. 817 of 1992 whereby the District Forum has directed the opposite party-appellant to pay a sum of Rs. 3,000/- as compensation to the complainant.

2. IT appears that the complainant (respondent in this appeal), filed a complaint before the District Forum alleging non-delivery of two registered parcels bearing Registration Nos. 118 dated 26.3.1992 and 4382 dated 2.6.1992 sent to him by post from New Delhi by the Joint Registrar, Indira Gandhi National Open University. As per allegation in the complaint petition, the said registered parcels contained study materials concerning the course "Diploma in Distance Education". The first registered parcel dated 26.3.1992 was sent back to Indira Gandhi National Open University with the report that the receipient had left when in fact the receipient was working there. The second registered parcel dated 2.6.1992 was neither delivered to him (complainant) nor was returned back to Indira Gandhi National Open University. On the allegations aforesaid, the complainant in his complaint petition had prayed

for delivery of the registered packet bearing Registration No. 4382 dated 2.6.1992 and for payment of Rs. 15,000/-.

The opposite party (appellant) filed his reply (written statement) to the complaint stating therein that the Registered Packet No. 118 dated 26.3.1992 addressed to the complainant, care of Sri Tapas Kumar Biswas, Sub-Accountant, Central Bank of India, New Dak Bunglow Road, Patna, was sent out through the beat postman for delivery to the addressee on 31.3.1992 but the postman was told by the staff of the said Bank that no such addressee worked in the said Bank and as such, the registered packet was returned to the sender with postman's remark "Office Mein Poochne Par Wahan Ke Aadmi Kahte Hain Ki Is Naam Ka Koi Aadmi Nahin Hai". Registered Packet No. 4382 dated 2.6.1992 addressed to the complainant and having similar address was sent out for delivery on 8.6.1992 through the beat postman. The beat postman asked the care party to produce the addressee for taking delivery of the packet on 8.6.1992 but the care party failed to do so. When the postman requested the care party to produce the authority from the addressee authorising him to take delivery of the packet, he could not do so and as such the packet was returned back to the sender with postman's remark "Central Bank Mein Is Naam Ka Koi Aadmi Nahin Hai". By letter dated 7.12.1992 the care party had admitted that he had no authority to receive registered article of the addressee. Rule 127 of the Postal Manual, Volume VI Part III provides that the postman is responsible for correct delivery of all articles and in case of doubt, the postman must satisfy as to the identity of the addressee before delivering the article. In the instant case, the addressee was neither available at the address given on the packet nor his whereabouts could be ascertained through any source. Receipt and acknowledgement for registered/insured article is in every case required to be signed by the addressee or some person authorised to receive such article on his behalf. In the instant case neither the complainant was found nor he had authorised anyone to receive the article on his behalf which ultimately resulted into return of the packet to the sender. On the said pleas, the opposite party (appellant) had prayed for dismissal of the complaint.

The complainant (respondent) filed a reply to the written statement of the opposite party denying the allegations made therein and asserting that the care party was posted in the said Bank from 1983 to 1993 without any break and neither any postman had gone to the address given on the registered packet nor had ever met and asked the care party to produce the addressee to take delivery. Care party being his (complainant's) cousin brother was capable to produce him at any place and time and to take delivery of the article as usual. Non-delivery of both the registered packets was due to the negligence, irresponsible act and dereliction of duty on the part of the employees of G.P.O., Patna.

3. THE complainant neither filed any affidavit in support of the contents of the complaint petition nor with regard to annexures thereto. No affidavit was filed even in support of the statements made in the reply to the written statement of the opposite party nor with regard to Annexures-II and III thereto. Of course an affidavit dated 27.4.1994 sworn by Tapas Kumar Biswas has been filed with regard to Annexure-I to the reply. Annexure-I is a letter dated 20.4.1993 addressed by Tapas Kumar Biswas to the District Forum. In the record of the District Forum, there is nothing to show that the said letter was ever sent to the District Forum. It appears that the said letter dated 20.4.1993 was brought on the record of the District Forum as Annexure-I to the reply only. No affidavit was filed on behalf of the opposite party in support of the case as made out in the reply (written statement) to the complaint. THE District Forum appears to have decided the case and passed the impugned order on the basis of the pleadings of the parties. At the time of hearing of this appeal no one appeared on behalf of the complainant-respondent to contest it and hence it has been heard ex-parte. Now it has to be considered if the impugned order is sustainable in law or not.

Certain facts are not disputed. It is not disputed that two registered packets bearing numbers 118 dated 26.3.1992 and 4382 dated 2.6.1992 had been sent to the complainant-respondent by Indira Gandhi National Open University, New Delhi. It is also not disputed that the packets had been addressed to the complainant under the care of Tapas Kumar Biswas, Sub-Accountant, Central Bank of India, New Dak Bungalow Road, Patna. It is also not disputed that the packets were not delivered to the complainant or to the care party. The explanation of the opposite party for non-delivery of the packets is as mentioned in para-3 of this judgment. According to the complainant, the explanation for non-delivery of the packets is false. However, this much is undisputed that the packets meant for the complainant were not delivered to him or to the care party.

4. THE learned Counsel for the appellant referred to Rule 127 of the Postal Manual Vol. VI, Part III which provides that the postman is responsible for correct delivery of all articles and in case of doubt, the postman must satisfy himself as to the addressee's identity by making proper enquiry before delivering the article. Referring to Rule 117 of Postal Manual Vol. VI, Part III, it was contended that receipt and acknowledgement for registered article is required in every case to be signed by

the addressee or some person authorised to receive the article on behalf of the addressee but in the instant case neither the complainant was found at the address noted on the packet nor he had authorised the care party to receive the packet on his behalf which resulted in return of the article to the sender. In this connection the learned Counsel referred to Annexure "A" to the written statement of the opposite party which is a copy of the letter addressed to the Chief Post Master, Patna, G.P.O. by the care party Shri Tapas Kumar Biswas. It was pointed out that in the said letter Shri Biswas has admitted that he did not have any letter of authority from the complainant regarding his mails and that he used to get ordinary letters of the complainant and had not received any registered letter of the complainant till the date of the letter. THE complainant has brought on the record of the District Forum a letter dated 20.4.1993 of Tapas Kumar Biswas as Annexure-I to his reply to the written statement of the opposite party for the purpose of showing that the said letter (Annexure "A" to the written statement) had been written in a hurry and he actually wanted to state that he did not possess any specific authority for the registered packets in question. It was pointed out by the learned Counsel that this letter dated 20.4.1993 is an after-thought and hence is of no consequence. It was further pointed out that even in this letter dated 20.4.1993, the care party has admitted that he had no specific authority for the registered packets in question and under such circumstance if the packets could not be delivered to the addressee, the opposite party-appellant cannot be held responsible for that.

The learned Counsel for the appellant referred to Section 6 of the Indian Post Office Act and contended that the complaint was not maintainable. Section 6 of the Indian Post Office Act reads thus - "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 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 of default." ]9. As is apparent, the section very clearly lays down that the Government shall not incur any liability by reason of loss, misdelivery or delay 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 provided by the Statute 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. There are some provisions in the Act where specifically Government has been made liable to pay compensation for the lost postal article. For example, Section 33 of the Act categorically says that subject to such conditions and restrictions, Central Government shall be liable to pay compensation for insured postal article. But where there is no such specific provision in the Act for payment of compensation, Section 6 grants complete immunity to the Government for liability

for loss, misdelivery, delay or damage to the postal articles. The second part of Section 6 deals with individual liability of the postal employees but states that 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. In the instant case, there is no allegation that the appellant Post Master of G.P.O., Patna was guilty of fraud or wilful act or wilful default which led to non-delivery of the registered packet. In the last para of his reply to the written statement of the opposite party, the complainant has alleged that non-delivery of the registered packets was due to the negligence, irresponsible act and dereliction of duty on the part of the employees of G.P.O., Patna. Such employees have not been specifically named either in the complaint petition or in the reply to the written statement. The person who cause non-delivery fraudulently or by his wilful act or default can be sued for damages but no action will lie against the Central Government or any of its officers vicariously for the wilful act or default of unnamed employees including postal peon. 10. It may be pointed out that by posting a letter or handing over a packet at the post office for transmission to the address of the addressee, the sender does not enter into any contract with the Government. The sender really avails of a service statutorily provided by the Government. It is true that postage stamps have to be affixed but that is for augmentation of Government revenue. It is not in the nature of price paid for the service. The post office does not accept a postal packet for transmission by post except under and subject to the provisions of the Indian Post Office Act and Regulation made thereunder. It is really a branch of public service providing postal services subject to the provisions of the Indian Post Office Act and Rules made thereunder. In other words, the relationship between the sender of postal article and the post office is governed by the Indian Post Office Act and not by law of contract or tort. There is no liability at all for loss or non-delivery of postal article except insofar as specifically provided by the Statute under Section 33 and Section 6 or any other regulation or rule. In the instant case the complaint has been made against Post Master but there is no allegation of any fraud or wilful act or default on his part. That being so, the complaint was not fit to be entertained rather was fit to be dismissed. In view of this the impugned order is not sustainable in law. 11. In the result, this appeal is allowed. The impugned order is hereby set aside and the complaint is dismissed. There is no order as to cost. Appeal allowed.