

(1993) 03 NCDRC CK 0015

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Department of Posts

APPELLANT

Vs

J.K. DAIGNOSTICS

RESPONDENT

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**Date of Decision:** March 31, 1993

**Citation:** 1993 2 CPR 591 : 1994 1 CPJ 291

**Hon'ble Judges:** S.A.Shah , R.K.Shah J.

**Final Decision:** Appeal partly allowed

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**Judgement**

1. THIS appeal is filed by Department of Posts, Rajkot, the original opponent. For the sake of convenience we will describe the parties as complainant and opposite party.

2. THE present Respondent the original complainant had sent two drafts of Rs. 5,000/- each on 25.11.91 and 26.11.91 by Registered Post to M/s. B.R. Enterprises, Ludhiana. It appears that these drafts were not delivered to the addressee i.e. M/s. B.R. Enterprises but were alleged to have been delivered to M/s. Hero Majestic, Ludhiana. THEREafter the complainant appears to have filed the complaint against the Postal Department claiming the damages of Rs. 10,000/- , the amount of draft, Rs. 5,000/- compensation and cost. On receipt of the summons from District Forum the Postal Department through Sr. Supdt. of Post Offices filed its version accepting that the alleged letters were sent by Registered Post but the contents of the letters were not disclosed. In para 3 of the written statement the appellant has pressed the provisions of Section 6 of the Indian Post Offices Act and further contended that the Consumer Protection Act does not super-scribe the other enactments and specific contention has also been raised that the opposite party was not liable for any loss caused by the wrong delivery of an article in view of the provisions of Section 6 of

the Indian Post Offices Act. THERE is no doubt that the registered letter was not insured. In order to appreciate the submissions of Mr. Dave, the learned Advocate appearing on behalf of the appellant, the provisions of Section 6 requires to be reproduced. Section 6 of the Post Offices Act reads as under: 6. "Exemption from liability for loss, mis-delivery delay or damages: THE Government, shall not incur any liability by reason of the loss, mis-delivery 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 officer of the post office shall incur any liability by reason of any such loss, mis-delivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default." Section 6 can be divided into two parts. THE first part deals with the liability of the Government and the second part deals with the liability of the officers of the Post Offices. In the instant case no complaint is filed against any of the officers of the post office. THE claim has been made only against the post office and, therefore, it is not strictly necessary to interpret the second part of Section 6. However, we refer the same for the purpose of understanding the full meaning of the provisions of Section 6.

Section 6 in terms states that the Government shall not incur any liability by reason of loss, mis-delivery or delay of or damage to any postal article in course of transmission by post, except in so far as such liability may in expressed terms undertaken by the Central Government as hereinafter provided. This, to our opinion is a blanket exemption to the post offices for liability arising out of loss, mis-delivery, delay or damage to any postal article except when such liability is undertaken by the Central Government which has been provided hereunder.

Mr. Dave draws our attention to the liability in respect of the registered post as provide in Post Office Guide Part I, Section II, Clause 170 which reads as under:

"170. Compensation- (1) The Head of the Circle may grant to the sender, or at his request to the addressee solely as an act of grace, and not in consequence of any legal liability compensation upto a limit of Rs. 50/- for the loss of any inland letter, packet or parcel, or its contents or for any damage caused to it in course of transmission by post, subject to the following conditions:- (a) That the prescribed registration fee shall have been prepaid in addition the postage. (b) That the application for compensation shall have been made within three months of the date of posting of the article in the case of loss of the article, and within one month of the date of delivery of the article in the case of loss of contents or damage. Rest of the sub-clause is not important for the purpose of this case. Clause 172 is important which reads as under: "172. Insurance:- Articles which can be insured- Registered letter, value payable registered letters, registered parcels and value-payable registered parcels may be insured up to the value of Rs. 600 at such branch post offices, and up to the value of Rs. 10,000 at such other post offices, as are authorised, to accept articles for insurance and for such post offices as are

authorised to deliver insured articles, provided that in no case shall such value exceed the real value of the contents of the articles insured; provided also that articles containing gold, coin or bullion Government currency notes or bank notes or any combination of these shall be insured for the actual value of the contents. For the purpose of this rule, papers, such as securities, legal documents, etc. may be regarded as having a real value."

"173. Insurance:- Insurance covers all risks in course of transmission by post."

3. THE learned Judge has also reproduced Section 6 and has observed in para 12 that "it is true that Section 6 of the Indian Post Office Act contemplates provision of exemption of postal department, but at the same time, this Forum cannot ignore the benevolent legislation drafted in favour of consumers of this country and it is also clear that Government and its machinery and its corporations are also included within the purview of the Act, 1986." THEREafter the learned Judge has observed that if the Government Corporations or Government organisations fail to exercise proper care and exigencies in service and thereby if there is any deficiency in service, then Government is also liable to make good the damages by way of payment of compensation to the consumer who has suffered on account of deficiency in service on the part of the Government.

The observations of the District Forum can be supported by the provisions of Section 2(1)(g) rw Section 3. We will first set out Section 3 which reads as under:

"Section 3. Act not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

Therefore, the beneficial provisions which recognises the right of the consumer can be said to be in addition to the provisions of any other law for the time being in force. When the service is hired by the consumer the provider of service shall have to provide service without deficiency and if there is a deficiency in service as defined in Clause (g) of Section 2(1), the Consumer Forum can pass appropriate orders vested with the Consumer Forums. A service can be said to be a deficient service if there is any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by person in pursuance of a contract or otherwise in relation to any service. When the Post Office accepts letters, particularly registered letters, it promises the consumer that same will be delivered to the addressee. If such a letter is not delivered to the addressee but delivered to somebody else it is definitely deficiency of service

undertaken to be performed by the post office and if there is a deficiency, the Consumer Forums can pass any of the orders mentioned in Section 14 viz. Return the complainant the charges paid by him and pay such amount as compensation for any loss or injury suffered by the consumer due to the negligence of the opposite party.

4. IN the instant case it has been proved that the letters which were to be delivered to the addressee containing demand drafts were delivered to somebody else. The act of delivery is graver because the letter was a registered letter and can be delivered only to the addressee after taking signature. We have, therefore, no doubt that the service of the Post Office in mis-delivering the letter was a deficient service and misdelivery of a registered letter to a wrong person is an act of negligence because every employee who is assigned with the delivery of the registered letters is supposed to know that the envelope contains a valuable document and the registration fees have been paid by the consumer to see that the letter is delivered to the right addressee after taking his signature.

No explanation has been given as to how the letter was delivered to wrong person whose name is not even similar to the name of the addressee. The Post Office has not come out with any explanation and, therefore, we shall have to come to the conclusion that the mis delivery of a registered letter to wrong person was an act of negligence and the Post Office is liable for the compensation for deficiency of service.

Mr. Vora, the learned Advocate appearing on behalf of the respondent-Original Complainant has cited the decision of Andhra Pradesh State Commission in the case of Koku Rajendra Prasad v. Union of India, represented by Supdt. of Post Offices, Nellore reported in 1991 (1) CPR 299 wherein the complainant wanted to pursue his further studies in Jawaharlal Nehru University by joining the M.A. degree course. The last date for the receipt of the applications to appear for the entrance examination for admission in M.A. Degree course was April 6,1990. The appellant has posted an envelope containing the duly filled in application form accompanied by a bank draft for Rs. 50/- towards the entrance fee. According to the appellant this envelope which was sent to the University on which the name and address of the addressee was printed on the envelope. Surprisingly the appellant received back the envelope on 6.4.90 without any endorsement of the postal department on it. The allegation was made that the postal department was grossly negligent in performing its functions and not delivery the envelope to the addressee though it was properly stamped and addressed, he filed a complaint and demanded Rs. 50,000/- as compensation for

loss of one academic year etc. The question arose whether the services rendered by the Postal Department in that case suffered from deficiency in any respect. The submission was made by the learned Counsel for Central Government that the Government was exempted from the liability by reason of any loss caused due to mis-delivery of any postal article in the course of transmission by post under Section 6 of the Indian Postal Offices Act. The Commission appears to have called for the original records and examined the envelope on which it was printed in bold letters "Application for Admission to M.A./M.Sc./M.C.A. Programme of Study in M.A.". The postal stamp was properly affixed and the address of the University was correctly printed. Curiously, the letter which was to be delivered to the Registrar of Jawaharlal Nehru University was mis-delivered to the sender himself and according to the findings of the Commission this was a clear case of fault or imperfection or shortcoming in the quality, nature and manner of performance of the service by the Postal Department. Thus the services rendered by the Postal Department suffered from deficiency. Arriving at this finding, the Commission awarded Rs. 2,000/- as compensation for the loss suffered by the complainant.

5. THE facts of this case are graver than the facts of the case cited by Mr. Vora. THE case before Andhra Pradesh Commission was a case of unregistered letter and said letter was not mis-delivered to 3rd party but delivered to the sender itself. Even then the A.P. State Commission has awarded Rs. 2,000/- as compensation for the loss suffered by the complainant. In the instant case the letters were registered letters containing demand draft which were not delivered to the addressee M/s. B.R. Enterprises whose address was properly and legibly written but was delivered to M/s. Hero Majestic. Now these two names have nothing in common and there is no probability to mislead the employee of the post office who delivered the letter to M/s. Hero Majestic. In this view of the matter, we are of the opinion that the mis-delivery is either deliberate or on account of gross negligence of the person who delivered these letters to M/s. Hero Majestic. On account of this mis-delivery, the Postal Department is definitely liable to pay compensation to the consumer for any loss or injury suffered by the consumer due to negligence of the Postal Department.

6. NOW the question therefore arises as to what should be the amount of compensation to be paid to the complainant for the deficiency in service on account of negligence of the Postal Department. NOW, it is an admitted position that the letter was not insured. In other words, the complainant has not paid the charges of insurance under which the Postal Department takes additional risk in accordance with the amount for which it is insured. It is possible that in the instant case the drafts were for the amount of Rs. 10,000 / but in a given case it can be worth lacs of rupees also. The encashment of the draft by third party by opening an account in that name has no direct nexus with the Postal Department. That is a criminal act of the miscreant and the miscreant is liable to return the money of the complainant. So far, we are concerned with the deficiency of the Postal Department is concerned and according to our opinion the complainant will be entitled to only to the compensation for loss and injury suffered by him due to negligence. It is difficult to precisely work out the compensation for deficiency in service and, therefore, the adjudicating authority shall have to estimate the compensation in accordance with the facts and circumstances of the case. In the instant case, the letters were sent by registered post which means 8 to 10 times more amount has been paid for sending the letter. That there is very little possibility of any mistake because both the names have no similarity. Thirdly, the clerk/officer who is in charge of the registered letter could have seen the signature of the person to whom the letters have been delivered under registered post and mistake could have been detected by him and that the complainant could have been informed in time to avoid consequences of mis-delivery. But nothing is done with the result that the complainant lost Rs. 10,000/- by the fraud of third party. In these circumstances, we assess the damages of compensation at Rs. 5,000/- only for the deficiency in service. According to our opinion, provisions of Section 6 would not be applicable in case of deficiency in service which is a separate cause of action and a new right created under the Consumer Protection Act. We are in agreement with the decision of the Andhra Pradesh State Commission. The District Forum has awarded Rs. 10,000/- as damages considering this as tortuous act. The encashment of the draft and recovery of Rs. 10,000/- by some miscreant is no doubt a tortuous act but this is not done by the Postal Department and, therefore, Postal Department cannot be held liable for consequential tortuous act of the third party. We shall therefore have to partly allow the appeal and reduce the amount awarded by the District Forum. In the result we partly allow the appeal and pass the following order. ORDER The appeal is partly allowed. The judgment of the District Forum is modified and for the reasons stated in our judgment we direct that the appellant Postal Department shall pay Rs. 5,000/- as compensation to the complainant for the deficiency in services. The appellant shall pay cost of Rs. 1000/- as directed by the District Forum. The appellant shall pay these amounts within 4 weeks from the date of receipt of the copy of the order failing which the appellant shall pay interest @ 18% p.a. Appeal partly allowed.