

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3246 OF 2016

(Against the Order dated 22/08/2016 in Appeal No. 111/2016 of the State Commission Haryana)

1. YOGESH KUMAR

S/O. SH. BRAHAM DUTT SHARMA, R/O. H.NO. KC-352,
WARD NO. 4, KRISHNA COLONY

PALWAL

HARYANA

.....Petitioner(s)

Versus

1. SUPERINTENDENT, INDIAN POSTAL DEPARTMENT

HEAD OFFICE, NEHRU GROUND, NEAR COLONY
CHOWK, N.I.T.

FARIDABAD

HARYANA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE DR. S.M. KANTIKAR, MEMBER

For the Petitioner : Mr. Bijender Kumar, Advocate

For the Respondent : Mr. H.L. Sharma, Advocate
Mr. Chander Kailash, Inspector, Post Office

Dated : 09 Mar 2023

ORDER

R.K. AGRAWAL, J., PRESIDENT

1. Challenge in this Revision Petition, filed by the Complainant under Section 21(b) of the Consumer Protection Act, 1986, is to the Order dated 22.08.2016 passed by the Haryana State Consumer Disputes Redressal Commission at Panchkula (hereinafter referred to as the State Commission) in First Appeal No.111/2016. By the Impugned Order, the State Commission, relying upon the Orders passed by this Commission in the Case of **Union of India & Ors. Vs. M.L. Bora - 2011 CTJ 27 (CP)**, has partly allowed the Appeal filed by the Opposite Party in the Complaint/Respondent herein, namely, Superintendent, Indian Postal Department, and modified the Order dated 31.12.2015 passed by the District Consumer Disputes Redressal Commission, Faridabad (hereinafter referred to as the District Commission) in Consumer Complaint No. 065/2015, preferred by the Complainant/Respondent herein, to the extent that the Indian Postal Department shall be liable to pay to the Complainant/Petitioner a sum of ₹500/- as lumpsum compensation in addition to ₹78/- as sanctioned by the them. The District Commission, while allowing the Complaint, had directed the Postal Department to pay to the Complainant/Petitioner a sum of ₹9,760/- in lieu of the amount spent by him on booking of the package tour and ₹2,200/- on account of mental tension and harassment besides ₹1,100/- towards litigation expenses, within a period of 30 days from the date of receipt of the order.

2. The facts, giving rise to the filing of the Complaint before the District Commission, are that the Complainant/Petitioner, being a Member of Niswiz Holidays Company (hereinafter referred to as the Company) vide Membership No.NW42258/38N3S, sent a Holiday Platter to the Company in respect of a Holiday Package for Agra vide Speed Post No.EH565828024IN on 24.12.2014 at 13:46 hours through Branch of the Opposite Party/Respondent at Sector-12, Mini Secretariat, Faridabad Post Office by paying

₹39/- as postal charges. The said speed post letter was to be delivered by the Respondent at its destination within 24 hours to 48 hours, i.e. latest by 26.12.2014. However, the same was delivered on 06.01.2015 only. According to the Complainant/Petitioner, he paid a sum of ₹10,000/- to the Company as package charges, which were not refundable, and spent an amount of ₹20,000/- on shopping. Due to delayed delivery of the Holiday Platter, the said package was not accepted and sanctioned by the Company, as a result of which the Complainant/Petitioner could not enjoy the said tour and suffered a financial loss of ₹30,000/-. The Complainant/Petitioner served a legal notice on the Opposite Party/Respondent on 05.01.2015 but did not receive any reply. Being aggrieved, he filed a Complaint before the District Commission, praying for a direction to the Opposite Party/Respondent to pay ₹10,000/-, which was not refunded by the Company; ₹20,000/- spent on shopping for the said tour; ₹50,000/- as compensation for mental tension, agony and harassment, and ₹11,000/- as litigation expenses.

3. Upon notice, the Opposite Party/Respondent entered appearance and filed the Written Statement. While admitting that the article in question was booked from Faridabad Sector-12 Post Office on 24.12.2014 for dispatch at Manimajra, Chandigarh and the same was delivered at its destination on 07.01.2015, it was pleaded that in terms of provisions of Section 6 of the Indian Post Office Act, 1898, the Postal Department was exempted from paying compensation for the delay in delivery of an Article; as per Citizen Charter, the standard norm for delivery of speed post article at Neighbouring State is 4-6 days, excluding day of posting, holidays and Sundays; effect of curfew, Bandh, Strike etc., and as per the prescribed Departmental Rules, the compensation for delay in delivery of speed post article had already been paid to the Complainant/Petitioner.

4. On appraisal of the evidence adduced by the Parties before it and bearing in mind the fact that the Postal Department, i.e. Opposite Party/Respondent, had already paid double the booking amount, i.e. ₹78/-, as compensation for delay in delivery of the article, the District Commission came to the conclusion that there was deficiency in service on the part of the Opposite Party/Respondent and due to late delivery of the speed post article, the package tour to Agra was not sanctioned by the Company, for which the Complainant/Petitioner had paid ₹9,760/-. Consequently, the District Commission partly allowed the Complaint and issued the afore-said directions to the Opposite Party/Respondent. However, the claim of ₹20,000/- spent on shopping for tour was rejected in the absence of any cogent evidence.

5. Dissatisfied with the Order passed by the District Commission, the Opposite Party/Respondent preferred the aforesaid Appeal before the State Commission. The State Commission found force in the case of the Opposite Party/Respondent that in view of Section 6 of Indian Post Office Act, 1898 it was absolved of any liability for delay in delivery of the article booked and consequently disposed of the Appeal, *inter alia*, observing thus:

“5. ... Consistent view of the Hon’ble National Consumer Commission and the State Commissions in the country had been to award on nominal compensation as permissible under the Post Office Act and Rules made thereunder, and not as claimed by the Consumers in their claim petitions. One such case decided by the Hon’ble National Commission is Union of India and Ors. Vs. M.L. Bora, 2011 CTJ 27 (CP) (NCDRC), wherein the Hon’ble National Commission has observed as under:-

“7. Section 6 is in two parts. The first part deals with the liability of the government and the second part deals with the individual liability of the postal employees. The first part of Section 6 absolves the Government of any liability by reason of loss, misdelivery of delay or damage to any postal article in the course of transmission by post except in so far as such liability may in express terms undertaken by the Central Government as provided by the statute. Second part provides that no office of the Post Office shall incur any liability by reason of such loss, misdelivery, delay or damage unless he has caused the same fraudulently or by his willful act or default.” Since, the instant case, the Complaint has been made against the Postal Authorities in general and there is no allegation of any fraud or willful act or default on the part of the any one of the respondents, the complaint is liable to be dismissed.”

6. In view of the law settled by the Hon'ble National Commission, the appeal of the Postal Authorities deserves to be allowed and the complaint is hereby disposed of with a direction to the OPs to pay to the complainant a sum of Rs.500/- in lumpsum compensation in additional to Rs.78/- as sanctioned by OP.

7. The statutory amount of Rs.6530/- deposited at the time of filing the appeal be refunded to the appellant against proper receipt and identification in accordance with rules.”

6. Hence, the present Revision Petition by the Complainant/Petitioner, claiming a sum of Rs.50,000/- in addition to the total amount of Rs.13,060/- awarded by the District Commission in his favour.

7. We have heard learned Counsel for the Parties and gone through the material on record, including the Orders passed by the District Commission and the State Commission, the grounds taken in the Memo of Revision Petition and the documents filed along with it.

8. Learned Counsel for the Complainant/Petitioner stated that the State Commission did not appreciate the evidence adduced and the documents filed by him; he had filed the Complaint against the erring service of the Opposite Party/Respondent, in which the District Commission had awarded a total amount of Rs.13,060/- in his favour; the Opposite Party/Respondent had filed the Appeal before the State Commission against the just and proper Order passed by the District Commission; the State Commission did not take care of the appropriate Order passed by the District Commission and passed the Impugned Order, which is violative of natural justice and has resulted in the miscarriage of justice and, therefore, the present Revision Petition be allowed.

9. Per contra, learned Counsel appearing for the Opposite Party/Respondent stated that the State Commission has passed a just and proper Order, which is based on correct appreciation of the statutory provisions, including Section 6 of Indian Post Office Act, 1898, and, therefore, the present Revision Petition, preferred by the Complainant/Petitioner, deserves to be dismissed.

10. This Case revolves around interpretation of Section 6 of Indian Post Office Act, 1898. In order to appreciate the contention of the Complainant/Petitioner, it is necessary to have a look on the provisions under the said Section, which reads as under:

“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 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, misdelivery, delay or damage unless he has caused the same fraudulently or by his wilful act or default”.

11. Further, in pursuance of Section 21 of Indian Post Office Act, 1898, Indian Post Office Rules 1933 were framed. The said Rules were amended from time to time. In the year 1986, the Rules were amended and Rule 66B was introduced w.e.f. 01.08.1986, which reads as under:

“66-B. INLAND SPEED POST SERVICE Inland Postal articles may be booked after obtaining receipts therefore, at the places specified in column (1) of the Schedule below and at the post offices specified in the corresponding entries in column (2) of the said Schedule for delivery under the Inland Speed Post Service subject to the following conditions namely:

(1) Inland Speed Post Service shall be available in respect of all classes of mails which can be sent by registered service;

(2) an inland speed post fee of Rs.10/- per article for distance upto 500 km. And of Rs.20 per article, weighing upto 5 kg. with an additional fee of Rs.5 for every additional kg. or part thereof, for distance beyond 500 kms. in addition to the postage and registration fee and air surcharge, wherever applicable shall be prepaid by the sender in the same manner as is prescribed in the case of registered and parcel mail articles;

(3) articles for booking under this service shall prominently bear on the front the superscription INLAND SPEED POST and shall also bear the name and address of the sender in addition to that of the addresses, including the PIN Codes, of the Post Offices of delivery serving the addressee and the sender and their telephone numbers, if any;

(4) complaints regarding any article booked under this service(including a demand for refund of fees in cases of non-delivery of articles within the stipulated time) may be preferred within three months from the date of booking of the article and shall inter alia contain the number of the article, the date of booking and the name of the office of booking;

(5) there will be no delivery of these articles on Sundays and other holidays in the post offices concerned.

Explanation: For the purpose of this rule Inland Speed Post Service means the service which seeks to deliver postal articles within stipulated time, specified in respect of each city or town, as the case may be from time to time, by a special messenger or conveyance. “

12. The above Statute Rule was further amended by Notification No. GSR 40 (E) dated 21.01.1999 and after aforesaid Condition No. 5 of Rule 66B, the following condition was inserted:

“In case of any delay of domestic speed post articles beyond the norms determined by the Department of Post from time to time, the compensation to be provided shall be equal to the composite speed post charge paid. In the event of loss of domestic speed post article or loss of its contents or damage to the contents, compensation shall be double the amount of composite speed post charges paid or Rs.1,000 whichever is less.”

13. In terms of the said provisions, the Department of Post issued a Circular No.43-4/87 BDD dated 22.01.1999 addressed to all Chief Post Masters General. The relevant portion of the said Circular is reproduced as under:

a) In the event of delay of domestic Speed Post articles beyond the prescribed delivery norms published from time to time as a part of money back guarantee, the speed post charges paid by the customer will be refunded subject to the condition that:

(i) Delay due to curfew, bandhs and strike etc. will not count as delay in delivery and such days of interruption will be excluded from the total days taken in delivery of articles.

(ii) The article booked beyond cut off time will be counted as booked on the next day and will be marked as Booked after cut off time

b) In the event of loss of Speed Post article, loss of contents or damage to the contents, the compensation payable to the customer will be - double the speed post charges or Rs.1000/- whichever is less.

The loss of article or loss or damages to its contents will first be established on receipt of confirmation to this effect from office of delivery/destination and responsibility fixed and amounts of compensation recovered from the official/s at fault. But settlement of claim will not be linked with recovery from the official. The sanction order will be issued straightway on receipt of confirmation in respect of loss or damage to contents of the article from delivery end.”

14. From a perusal of the above provisions, it is clear that Section 6 of Indian Post Office Act, 1898 provides for immunity to the Government, i.e. Postal Department, from any liability by reason of loss, misdelivery, delay or damage to any postal article in the course of transmission by post except in cases where in expressed terms the liability is undertaken by Central Government. In the event of delay of domestic speed post article beyond the prescribed delivery norms from time to time as a part of money back guarantee, the speed post charges paid by the customer are refundable. Admittedly, in the present Case, there was delay on the part of the Opposite Party/Respondent in delivering the speed post letter of the Complainant/Petitioner, necessitating payment of compensation to the Complainant/Petitioner vide Post Department’s Memo No. CR-2/14-15 dated 22.06.2015, as stated in the Order passed by the District Commission. Therefore, there is no deficiency in service on the part of the Opposite Party/Respondent even if there is delay in delivering the speed post article booked by the Complainant/Petitioner.

15. The same view has been taken by this Commission in **Union of India & Ors. Vs. M.L. Bora – 2010 SCC OnLine NCDRC 290**, relied upon by the State Commission, and **Chief Postmaster General & Anr. Vs. Babu Lal Saini – 2018 SCC OnLine NCDRC 484**.

16. In this view of the matter, even if the contention of the Complainant/Petitioner is accepted that the State Commission has not considered the evidence and documents filed by him and the appropriate Order passed by the District Commission in the correct perspective, the fact remains that in view of the aforesaid provisions the relief sought for by the Complainant/Petitioner in the present Revision Petition cannot be granted. The State Commission has considered all aspects of the matter and thereafter modified the Order passed by the District Commission by passing the Impugned Order in the above terms, which, for the reasons recorded in the same, cannot be faulted.

17. The Revision Petition fails and is dismissed accordingly.

.....J
R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR

