

S.P. Goel vs Collector Of Stamps, Delhi on 8 December, 1995

Equivalent citations: 1996 AIR 839, 1996 SCC (1) 573, AIR 1996 SUPREME COURT 839, 1995 (6) SCC 219, 1995 AIR SCW 3721, 1996 ALLAPPCAS (CRI) 17, 1996 APLJ(CRI) 12, (1996) MARRILJ 288, (1996) MATLR 42, 1995 CRILR(SC MAH GUJ) 585, 1995 CRILR(SC&MP) 585, (1995) 3 ALLCRILR 258, (1995) 60 DLT 568, 1995 CALCRILR 358, 1995 SCC (CRI) 1090, (1996) 1 EASTCRIC 165, (1996) 10 OCR 37, 1996 (1) APLJ 49, (1995) 2 HINDULR 598

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

S.P. GOEL

Vs.

RESPONDENT:

COLLECTOR OF STAMPS, DELHI

DATE OF JUDGMENT 08/12/1995

BENCH:

AHMAD SAGHIR S. (J)

BENCH:

AHMAD SAGHIR S. (J)

KULDIP SINGH (J)

CITATION:

1996 AIR 839

1996 SCC (1) 573

JT 1995 (9) 545

1995 SCALE (7) 174

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S. Saghir Ahmad, J.

Special leave granted.

Built up property No.C-83, Okhla Industrial Area, Phase-I. New Delhi 110 020 constitutes the basis of dispute between the parties in the present appeal which is directed against the judgment and order dated 18, 1995, passed by the National Consumers Redressal Commission. New Delhi, whereby the complaint of the appellant under the Consumer Protection Act, 1986 was dismissed on the ground that the District Consumer Forum as also the State Commission had no jurisdiction to adjudicate upon the claim petition filed by the appellant to the effect that there was "deficiency of service" on the part of the respondent in not registering the document or issuing certified copy thereof in spite of full registration charges having been paid.

The document of which the registration was sought by the appellant is a "Will" dated 24th July, 1987 executed in his favour, as also in favour of his wife, Smt. Shanti Rani Goel, by one Shri P.N. Mishra which was presented for registration on 24th August, 1987 before the Sub-Registrar- III, New Delhi who, instead of registering the document, impounded it as he was of the opinion that it was not a "Will" but a Deed of Conveyance which was not duly stamped. He, therefore, sent the document in original to the Collector of Stamps for action under Section 40 of the Stamps Act with the suggestion that the instrument was chargeable with 3% of the amount of consideration as Stamp Duty and 5% as Transfer Duty. The Collector of Stamps, New Delhi issued several notices to the appellant and ultimately in response to one such notice, the appellant appeared before the Collector and was apprised of the fact that the document presented by him for registration was not a "Will" but a conveyance deed and, therefore, he was required to furnish the Valuation Report, Receipts, General Power of Attorney etc. so that the document may be required to be properly stamped and registered.

While the matter was pending before the Collector, the appellant filed a complaint on 6th September, 1991 before the District Forum, Delhi, constituted under the Consumer Protection Act, 1986 for various reliefs, including registration of the "Will" as also for the supply of certified copy thereof besides compensation for harassment since 1987. The District Forum, Delhi, by order dated 12th May, 1993, allowed the claim with the finding that the Collector of Stamps had not taken any decision as to the nature of document for about six years and was, therefore, liable to pay Rs.700/- as compensation and Rs.500/- as costs of litigation particularly as the appellant having paid the registration charges shall be treated to have hired the services of the Sub-Registrar and the Collector of Stamps within the meaning of Consumer Protection Act.

Two separate appeals, one by the complainant (appellant) and the other by the respondent, were filed against the above order of the District Forum-I, Delhi, before the State Commission which by its order dated 11th April, 1994 not only upheld the decision of the District Forum but also enhanced the amount of compensation to Rs.5,000/-.

The respondent, thereafter, filed a revision before the National Forum which, by the impugned judgment, allowed the revision with the finding that the District Forum as also the State Commission had no jurisdiction to entertain and adjudicate upon the claim of the appellant particularly, as he was not a "consumer" within the meaning of Consumer Protection Act, 1986.

"Consumer" has been defined in Section 2(1)(d) of the Act as under:-

"2(1)(d). "consumer" means any person who-(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

[Explanation- For the purpose of sub-

clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]"

"Service" has been defined in Section 2(1)(o) as under:-

"2(1)(o). "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

"Deficiency" has been defined in Section 2(1)(g) as under:-

"2(1)(g). "deficiency" means any fault, imperfection, shortcoming 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;"

The meaning of two important definitions, namely, "consumer" and "service" have since been considered by this Court in Lucknow Development Authority vs. M.K. Gupta, AIR 1994 SC 787=1994(1) SCC 243, in which this Court (regarding "consumer") observed as under:-

"It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are

beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it."

Regarding "service", the Court observed as under:-

"It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionaryally means 'one or same or all'. In Black's Law Dictionary it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'same' or 'one' and its meaning in a given statute depends upon the context and subject-word 'any' in the context it has been used in clause(o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as capable of coming into being, possibility'. In Black's Law Dictionary it is defined as 'extending in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future installments or payments on a contract or engagement, already made.' In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act."

"Consumer" has also been explained by this Court in Morgan Stanley Mutual Fund vs. Kartick Das, 1994 (4) SCC 225, as under:-

"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use of consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer."

Learned counsel for the appellant contended that in view of these decisions, the matter involved in the present appeal does not require any further prob as the questions relating to the interpretation of the definitions of "consumer" or "services", or, for that matter, "Deficiency in Service" stand

conclusively decided.

We have carefully considered the aforesaid decisions but we are strongly of the view that they are not applicable to the present case as the concept of the Consumer Protection Act is different than the scope and object, or, for that matter, purpose of the two other Acts, namely, the Registration Act and the Stamp Act.

Registration of documents is regulated by the provisions of Registration Act, 1908 whereas payment of Stamp Duty on documents presented for registration is regulated by the Indian Stamp Act, 1899. Both the Acts deal with the State Revenue.

Under the Registration Act, the State Government appoints an Inspector General of Registration and of number of Registrars and Sub-Registrars for "Districts" and "Sub- Districts" who functions under Inspector General and perform such duties as are assigned to them under law.

Section 17 of the Registration Act enumerates the documents of which registration is compulsory while Section 18 constrains the list of those documents of which registration is optional. Documents presented for registration have to be properly stamped irrespective of their being either compulsory or optionally registerable, unless they are not chargeable with any stamp duty under the Stamp Act.

What is the stamp duty which is to be paid on a document depends upon the nature of the document. The Stamp Act contains a Schedule appended to it in which various categories of documents and the stamp duty payable on those documents have been specified.

In the instant case, we are concerned with an "Instrument Conveyance". "Instrument" as defined in Section 2(14) of the Stamp Act includes every document by which any right or liability purports to be, created, transferred, limited, extended, extinguished or recorded. Section 2(10) of the Stamp Act defines "Conveyance" as under:-

"2(10). Conveyance- "Conveyance"

includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I."

This definition has to be read along with Section 3 which provides as under:-

"3. Instruments chargeable with duty - Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say -

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand, or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that on duty shall chargeable in respect of -

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 (57 and 58 Vict, Section 60, 10 of 1841), as amended by subsequent Acts."

The relevant entry relating to "Conveyance" is Entry 23 of Schedule I of the Stamp Act in which the amount of stamp duty had been indicated with reference to the amount of consideration involved in the transaction mentioned in the Deed of Conveyance. It is specifically provided in Section 35 of the Stamp Act that:-

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

It is, thus, apparent that a document or instrument which is not duly stamped will not be registered and the Sub- Registrar before whom the document is presented may well refuse its registration and may, even, impound the document in the course of performance of his statutory duties under Section 33(1) of the Stamp Act which provides as under:-

"33(1). Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same."

Under this Section, every instrument which is not duly stamped is liable to be impounded.

After impounding the instrument, the Sub-Registrar has to send the document in original to the Collector as required by Section 38 (2) of the Stamp Act. What the Collector would do on receipt of an instrument impounded under Section 33 and send to him under Section 38(2) is indicated in Section which provides as under:-

"40. Collector's power to stamp instruments impounded -

(1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Section 38; sub-section (2), not being an instrument chargeable [with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:-

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be ;

(b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees;

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1), shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under Section 38, sub-

section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer."

The procedure indicated in this Section contemplates that the Collector shall form an opinion as to the (i) chargeability of the instrument with stamp duty and (ii) the amount of duty payable on that instrument and thereafter he shall require the payment of the proper duty or the amount required to make up the said duty together with a penalty which will be either five rupees or an amount not exceeding ten times the amount of the proper duty or the deficient portion thereof.

Since the Collector has to take a decision with regard to the nature of the instrument as also with regard to the amount of stamp duty payable on that instrument, it is implicit that he has to act in accordance with the principles of Natural Justice and give an opportunity to the person liable under law to pay the stamp duty to enable him to show that the instrument was either not chargeable with

any stamp duty or that it was properly and duly stamped. He may also in the process show or indicate that the penalty was not liable to be imposed upon him.

The decision of the Collector is not final as it is provided by Section 45 of the Act that the Chief Controlling Revenue Authority may, upon an application made in writing within three months of the order of the Collector, refund the amount if it is of the opinion that the stamp duty in excess of the amount which was legally chargeable, has been charged and paid under Section 40 of the Act. The exercise of power by the Collector is always subject to the control of the Chief Controlling Revenue Authority under Section 56 of the Act. The Chief Controlling Revenue Authority may also refer a case to the High Court for its opinion as provided by Section 57 of the Act.

Under Section 33 of the Stamp Act, power to impound a document or instrument which is not duly stamped, is also available to the courts including a High Court. Unless properly stamped, instruments will not be admitted in evidence nor shall they be acted upon. The courts, like the Chief Controlling Revenue Authority, have also the power to refer a case to the High Court under Section 60 for its decision as to the sufficiency of the stamp duty payable on the instrument filed or produced before it during the course of trial of a civil suit or criminal or revenue case. If the Court itself decides that the instrument was duly stamped and was, therefore, admissible in evidence or admits the instrument in evidence on payment of duty and penalty, its decisions would be revisable under Section 61 by the Court to which an appeal would lie from the decree or order passed by that court.

Thus, in the matter of determination of stamp duty, the courts, including the High Court, apart from Collector and the Chief Controlling Revenue Authority, are involved either at the stage of registration and determination of Stamp Duty or admissibility of the instrument (document) in evidence in a pending case.

The hierarchy under the Registration Act has already been indicated above but it will be useful to point out here that every Sub-Registrar performs the duties of his office under the superintendence and control of the Registrar of the District while the Inspector General exercises general superintendence over all the registration offices in the State. (See, Sections 68 and 69) It is also provided in the Act that if the Sub- Registrar refuses to register a document, he has to record his reasons in the order which is appealable before the Registrar under Section 72 of the Registration Act. If, however, the registration is refused even by the Registrar, then the person claiming under the document of which registration was sought, may, as provided by Section 77, file a suit for a decree directing the document to be registered.

Undoubtedly, proceedings before the Court are judicial proceedings while the proceedings before the Registrar in an appeal filed against the order of the Sub-Registrar will be quasi-judicial in nature and will be regulated by principles of Natural Justice.

Running through the twin Acts, namely, the Registration Act and the Stamp Act, we could not, at any stage, reconcile ourselves to the idea spoused by the appellant's counsel, that there is an element of commercialism involved in the whole process of registration of instruments or payment of Stamp

Duty and that the executant of an instrument, at the time of its presentation for registration, becomes a "consumer" entitled to "service" within the ambit of Consumer Protection Act. The reasons are many.

The Registration Act as also the Stamp Act are meant primarily to augment the state revenue by prescribing the stamp duty on various categories of instruments or documents and the procedure for collection of stamp duty through distress or other means including criminal prosecution as non-payment of stamp duty has been constituted as an offence. Payment of registration fee or registration charges including charges for issuing certified copies of the registered documents or fee for the inspection of various registers or documents kept in the Registrars or Sub- Registrars office etc. constitute another component of state revenue.

In this situation, therefore, the person who presents a document for registration and pays the stamp duty on it or the registration fee, does not become a consumer nor do the officers appointed to implement the provisions of the two Acts render any service within the meaning of Consumer Protection Act. They only perform their statutory duties (some of which, as earlier indicated, are judicial or, at least, quasi-judicial in nature) to raise and collect the State revenue which is a part of the sovereign power of the State.

Learned counsel for the appellant again invited our attention to the decision of this Court in Lucknow Development Authority's case (supra) and contended that in view of the following observations:-

"Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socioeconomic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system."

The claim preferred by the appellant under the Consumer Protection Act was positively entertainable as the officers under both the Acts has been negligent in the performance of their duties in as much as the Collector had not determined the nature of the document or the amount of stamp duty payable on that document for 5 or 6 years and had thus kept the appellant in a state of

suspense causing, to say the least, great mental agony and annoyance. This argument again, in our opinion, is fallacious.

The observations of this Court extracted above on which strong reliance has been placed by the learned counsel for the appellant are undoubtedly true and we also reiterate that a Government officer may be held liable in tort if, in the discharge of his official administrative duties, he acts maliciously or with oblique motive or mala-fide but the position in the instant case, is different in many vital respects.

We have already indicated above that under the Registration Act as also under the Stamp Act, the officers, apart from performing administrative duties, also, at times, perform quasi-judicial functions. The Courts are also involved at some stage in the matter of determination of stamp duty. The Courts and the officers are thus component of one and the same set up under these Acts. The Presiding Officers of the Courts are protected under the Judicial Officers (Protection) Act, 1850, read with the Judges (Protection) Act, 1985. But, so far as the officers are concerned the position is a little different.

We are, however, in the instant case, concerned with the question of protection of "Collector" and, therefore, we are not considering the question of protection of "other officers".

Section 1 of the Judicial Officers (Protection) Act, 1850 provides, inter-alia, as under :-

"1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction :

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.

.....", This Section contains the common law rule of immunity of Judges which is based on the principle that a person holding a judicial office should be in a position to discharge his functions with complete independence and, what is more important, without there being, in his mind, fear of consequences. The scope and purpose of this Act has already been explained by this Court in *Anwar Hussain v. Ajoy Kumar Mukherjee and others.*, AIR 1965 SC 1651, in which the old decision in *Teyen v. Ram Lal* (1890) ILR 12 All. 115 was approved. The position of Judges, Judicial Officers and Magistrates has since been made more secure by the enactment of Judges (Protection) Act, 1985.

In the instant case, Collector alone has been arrayed as respondent and the claim under the Consumer Protection Act was filed only against him. "Collector" has been defined in Section 2(9) of the Stamp Act as under:-

"S.2(9) - Collector

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively and, without those limits, the Collector of a district, and

(b) includes a Deputy Commissioner and any officer whom the State Government may, by notification in the official Gazette, appoint in this behalf."

Since "Collector" has been specifically mentioned along with Judges, Magistrates and Justices of Peace in the Judicial Officers (Protection) Act, 1850, it is obvious that immunity from legal action contemplated by this Act will also be available to him.

Apart from the above, Section 86 of the Registration Act provides as under:-

"86 Registering officer not liable for thing bona fide done or refused in his official capacity. - No registering officer shall be liable to any suit, claim or demand by reason of any thing in good faith done or refused in his official capacity."

This Section provides complete protection to the Registering Officer for things done "bona fide" by him under the Act. It is obvious that action which is not bona fide or which is malicious will not be protected.

These provisions were not noticed by this Court in Lucknow Development Authority's case obviously because this aspect of the matter was not involved therein. In the instant case, neither the appellant pleaded nor has the District or the State forum recorded any finding that the refusal of the Registering Officer or the inaction of the Collector of Stamps was malicious, motivated or mala-fide. We need not, therefore, further delve into the matter.

The appeal consequently fails and is dismissed.