

A THE SUPERINTENDENT OF POST OFFICE, BOLANGIR
DIVISION, BOLANGIR, ODISHA

v.

JAMBU KUMAR JAIN

B (Civil Appeal Nos. 1894-1895 of 2020 Etc.)

MARCH 02, 2020

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

- Consumer Protection – Deficiency in service on part of the Post Office – Claim of – The father of the respondent – complainant purchased 88 Indira Vikas Patras of the denomination of Rs. 5000/- each – The IVPs were lost – A police complaint was lodged alleging theft of these IVPs – It was contended that despite demands made by the complainant, the value of the lost IVPs was not being made over by the Post Office to him and as such, there was deficiency in service on part of the Post Office – The District forum directed the Post Office to release payment of the maturity value of 88 IVPs – The view taken by the District Forum was accepted by the National Commission – On appeal, held: It is not in dispute that IVPs in the instant case were purchased through cash – At no stage, the identity of purchaser was thus disclosed or registered with the Department – The matter has to be considered purely from the perspective of the governing Rules – If in case the IVPs are lost/stolen or mutilated or defaced beyond recognition, the Rules are clear that they shall not be replaced by the Post Office – In the face of such statutory provision, the refusal on the part of the Department to entertain any request for maturity sum was absolutely right and justified – It can never be said that there was deficiency on the part of the Department in rendering any service expected of them – Indira Vikas Patra Rules, 1986 – r. 5.*

Disposing of the appeals, the Court

- G HELD: 1. In terms of Rule 5 of the Indira Vikas Patra Rules, 1986 IVPs could be purchased at any Post Office after payment in cash or by a Cheque/Pay Order or Demand Draft and no formal application was necessary for such purchase. As against payment made in Cash, the IVPs would be delivered immediately while in

respect of payments made either through Cheque or Pay Order or Demand Draft, the same would be issued only after the encashment of any of those instruments. In terms of Rule 6(4), IVPs were transferable. According to Rule 7(1), if the Certificate was mutilated or defaced, the bearer would be entitled to have it replaced on payment of fee of rupee one but if the certificate was lost or stolen or mutilated or defaced or destroyed beyond recognition, in terms of Rule 7(2) it would not be replaced by any Post Office. [Para 11][1154 C-E]

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2. It is not in dispute that the IVPs in the present matter were purchased through cash. At no stage, the identity of the purchaser was thus disclosed or registered with the Department. In a situation, where the IVPs were purchased either through Cheque or Pay Order or Demand Draft, there would still be a possibility, through link evidence, to establish the identity of the purchaser but in case of a purchase through the modality of cash, there would be nothing on record which could establish the identity of the purchaser.

It may be that there are no claims in respect of the IVPs in question but that does not mean that any person can claim maturity sum in respect of such IVPs and offer an indemnity. [Para 12][1154 E-G]

3. The matter has to be considered purely from the perspective of the governing Rules. If in case the IVPs are lost/ stolen or mutilated or defaced beyond recognition, the Rules are clear that they shall not be replaced by the Post Office. In the face of such statutory provision, the refusal on the part of the Department to entertain any request for maturity sum was absolutely right and justified. It can never be said that there was deficiency on the part of the Department in rendering any service expected of them. [Para 13][1154-H; 1155 A-B]

4. If the Department had refused to encash the Certificates upon presentation or even after encashment had refused to make the payment or had made short payment, there could still be a grievance about deficiency in service but if the Certificates themselves are lost and the identity of the initial holder could

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- A never be established through the record, the Department was well within its rights not to accept the prayer for return of the maturity sum. [Para 13][1155 B-C]

Central Government of India and Others v. Krishnaji Parvetyesh Kulkarni (2006) 4 SCC 275 : [2006] 3 SCR 927 – relied on.

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Case Law Reference

[2006] 3 SCR 927

relied on

Para 14

CIVIL APPELATE JURISDICTION: Civil Appeal Nos. 1894-1895 of 2020.

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From the Judgment and Order dated 11.09.2018 in Revision Petition No. 2116 of 2018 and 11.10.2018 in Review Application No. 355 of 2018 in Revision Petition No. 2116 of 2018 passed by National Consumer Disputes Redressal Commission at New Delhi.

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With
Civil Appeal Nos. 1896-1897 of 2020.

R. Balasubramanian, Sr. Adv., Ms. Aankansa Kaul, Deepak Goeal, Raj Bahadur Yadav and Gurmeet Singh Makker, Advs. for the Appellant.

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S. B. Upadhyay, Sr. Adv., L. Mohapatra and Parijat Kishore, Advs. for the Respondent.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

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CIVIL APPEAL NOS. 1894-1895 OF 2020

(Arising out of SLP (Civil) Nos. 16164-16165 of 2019)

1. Leave granted.

- G 2. These appeals arise out of the final judgment and order dated 11.09.2018 passed by the National Commission¹ in Revision Petition No.2116 of 2018 and order dated 11.10.2018 in Review Application No.355 of 2018 preferred in the aforesaid revision petition.

3. Complaint, being CDC No.43 of 2015 was filed by the respondent herein before the District Forum² contending *inter alia* that 88 Indira Vikas Patras ('IVP', for short) of the denomination of

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¹ National Consumer Disputes Redressal Commission, New Delhi

² District Consumer Disputes Redressal Forum, Bolangir, Odisha

Rs. 5000/- each, purchased by the father of the complainant sometime during the period 1996 to 1998, were lost in the month of June 2001. A police complaint was lodged on 25.06.2001 alleging theft of those IVPs and thereafter by intimation dated 14.07.2001 a request was made to the Superintendent of Post Offices, Bolangir to stop payment of any amount upon maturity of the IVPs without proper verification of the holder. It was further submitted that despite demands made by the complainant, the value of the lost IVPs was not being made over by the Post Office to him and as such, there was deficiency in service on part of the Post Office. With the aforesaid allegations, the following principal reliefs were claimed in the complaint:

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“(i) The O.P. be directed to pay the maturity value of 88 numbers of IVP of Rs.5,000/- each denomination = Rs.8,80,000/- and due interest till final payment is made,

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(ii) A sum of Rs.1,00,000/- as claimed as compensation for deficiency in service and loss caused to the complaint and Rs.10,000/- is claimed towards the cost of litigation”

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4. In its reply, the appellant submitted that in terms of Indira Vikas Patra Rules, 1986, ('the Rules', for short), no formal application was necessary to purchase the IVPs and in case the IVPs were purchased by cash, the identity of the purchaser would not be recorded by the Post Office in any document nor any receipt would be issued at the time of issuance of the IVPs, that all the IVPs were bearer instruments like currency notes; that there was no proof or evidence that any consideration was paid by the complainant; and that the complainant could not be termed as a “consumer” within the meaning of the Act³. It was further submitted that the Rules were binding on the Department and since it had acted purely in terms of the Rules, there was no deficiency on its part.

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5. The aforesaid complaint was allowed by the District forum vide its order dated 30.03.2016 and it was directed as under:

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“We hereby direct the O.P. to release payment of the maturity value of 88 nos. of IVPs bearing No.63C 113623 to 113666 and 3515 to 3558 and 113667 to 113710 and 3559 to 3602 respectively amounting to Rs. 8,80,000/- (Rupees Eight Lakh Eighty thousand) only, to the petitioner after furnishment of an indemnity bond from

³ The Consumer Protection Act, 1986

- A the petitioner within thirty-five days of this order. Non compliance will attract a penalty of Rs.20 per day till realization.”
6. The appellant being aggrieved filed Appeal No.356 of 2016 before the State Commission⁴, which was dismissed by the State Commission on the ground of non-prosecution. The matter was carried
- B further by filing Revision Petition No.2116 of 2018 before the National Commission.

7. The submissions advanced on behalf of the appellant were recorded as under:

- C “The Learned Counsel for the Petitioner contended that since inception the Respondent is not a Consumer and no deficiency in service has been committed on the part of the Petitioner and the Complaint of the Respondent is not maintainable. As per Rule 7(2) and 10 of the IVP Rules, 1986, the Respondent is not entitled to any claim and hence his claim has been rejected by the Department.”

However, the view taken by the District Forum was accepted by the National Commission. It was observed in order dated 11.09.2018:

- E “The Respondent’s Father had purchased 88 IVPs for a total amount of Rs.8.8 lakhs. The same were lost and a Police Complaint was filed. The claim of the Respondent on maturity was rejected. Several years have elapsed and the amount deposited still lies with the Postal Department. So far there appears no other claimant for the amount. It certainly cannot be the case of the Petitioner to appropriate the entire amount forever, since the lost documents has not been submitted to them. It is but fair and reasonable that after proper verification and taking due precautions like indemnity bond etc., the Department after securing its interests, should at least pay the maturity value to the Respondent, after having not succeeded in the several rounds of litigation. This Commission way back in the year 2002, in a matter of similar nature has elaborately discussed the issues and directed the department to release the money, as sufficient time had elapsed since the date of maturity. Therefore, it clearly appears that there is no error in the order passed by the District Forum.”

H ⁴ State Consumer Disputes Redressal Commission, Cuttak, Odisha

8. Thereafter, Review Application No.355 of 2018 was preferred A by the appellant. However, said Review Application was also dismissed by the National Commission vide order dated 11.10.2018.

9. The aforesaid two orders passed by the National Commission B are presently under appeal before us. We have heard Mr. R. Balasubramanian, learned Senior Advocate for the appellant and Mr. S.B. Upadhyay, learned Senior Advocate for the respondent. It was submitted by Mr. Upadhyay that in the present matter, the value in respect of the IVPs in question had not been claimed by any other person and in any case the respondent was willing to furnish any indemnity bond that in case any claim were to surface, he would indemnify the Department. C

10. Before we consider the matter, we must set-out the relevant Rules. The Rules were issued vide Ministry of Finance (DEA) Notification No.G.S.R. 1183(E) dated 05.11.1986. Rules 5, 6 and 7 of the Rules, as amended from time to time, are as under:

“5 Procedure for purchase of certificates: (1) A certificate D may be purchased at a Post Office on payment of any one of the following modes, namely:

- (i) by cash; or
- (ii) by locally executed cheque, pay order or demand draft drawn E in favour of the Postmaster; or
- (iii) by presenting a duly signed withdrawal form or cheque with the Pass Book for withdrawal from Post Office Savings Account standing in the credit of the purchaser at the same Post Office.

2. No formal application is necessary for purchase of a certificate. F

6. Issue of Certificate: (1) On payment being made by cash, a certificate shall be issued immediately and date of such certificate shall be the date of payment.

(2) Where payment for purchase of a certificate is made by locally G executed cheque, pay order or demand draft, the certificate shall not be issued before the proceeds of the cheque, pay order or demand draft, as the case may be, are realised and the date of such certificate shall be the date of encashment of the cheque, pay order or demand draft, as the case may be.

- A (3) If, for any reason, a certificate cannot be issued immediately, a provisional receipt shall be given to the purchaser which may later be exchanged for a certificate and the date of such certificate shall be as specified in sub-rule (1) or sub-rule (2), as the case may be.
- B (4) A certificate issued under this rule is transferable.
- 7. Replacement of certificate:** (1) If a certificate is mutilated or defaced, the bearer is entitled for replacement from the Post Office of issue on payment of fee of rupee one.
(2) A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition, will not be replaced by any Post Office.”
- D 11. In terms of Rule 5 of the Rules, IVPs could be purchased at any Post Office after payment in cash or by a Cheque/Pay Order or Demand Draft and no formal application was necessary for such purchase. As against payment made in Cash, the IVPs would be delivered immediately while in respect of payments made either through Cheque or Pay Order or Demand Draft, the same would be issued only after the encashment of any of those instruments. In terms of Rule 6(4), IVPs were transferable. According to Rule 7(1), if the Certificate was mutilated or defaced, the bearer would be entitled to have it replaced on payment of fee of rupee one but if the certificate was lost or stolen or mutilated or defaced or destroyed beyond recognition, in terms of Rule 7(2) it would not be replaced by any Post Office.
- E 12. It is not in dispute that the IVPs in the present matter were purchased through cash. At no stage, the identity of the purchaser was thus disclosed or registered with the Department. In a situation, where the IVPs were purchased either through Cheque or Pay Order or Demand Draft, there would still be a possibility, through link evidence, to establish the identity of the purchaser but in case of a purchase through the modality of cash, there would be nothing on record which could establish the identity of the purchaser.
- F G It may be that there are no claims in respect of the IVPs in question but that does not mean that any person can claim maturity sum in respect of such IVPs and offer an indemnity.
- H 13. The matter has to be considered purely from the perspective of the governing Rules. If in case the IVPs are lost/stolen or mutilated

or defaced beyond recognition, the Rules are clear that they shall not be replaced by the Post Office. In the face of such statutory provision, the refusal on the part of the Department to entertain any request for maturity sum was absolutely right and justified. It can never be said that there was deficiency on the part of the Department in rendering any service expected of them.

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If the Department had refused to encash the Certificates upon presentation or even after encashment had refused to make the payment or had made short payment, there could still be a grievance about deficiency in service but if the Certificates themselves are lost and the identity of the initial holder could never be established through the record, the Department was well within its rights not to accept the prayer for return of the maturity sum.

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14. In *Central Government of India and others vs. Krishnaji Parvetesh Kulkarni*⁵, similar prayer made through a writ petition, was rejected by this Court with following observations:-

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“An IVP is akin to an ordinary currency note. It bears no name of the holder. Just as a lost currency note cannot be replaced, similarly the question of replacing a lost IVP does not arise. Rule 7(2) makes the position clear that a certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any post office. Similar is the position as regards the certificate which is either lost or stolen. Undisputedly there was no challenge to the legality of the rule 7(2). In the absence of a challenge to the provision, any direction should not really have been given. It is fundamental that no direction which is contrary to law can be given.”

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15. In our view, the District Forum and the National Commission completely erred in accepting the claim. We, therefore, allow these appeals, set-aside the view taken by the National Commission and dismiss the original complaint. No costs.

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CIVIL APPEAL Nos.1896-1897 OF 2020

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(Arising out of SLP (Civil) Nos.16166-16167 of 2019)

16. Leave granted.

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⁵ (2006) 4 SCC 275

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- A 17. These appeals arise out of the final judgment and order dated 11.09.2018 passed by the National Commission in Revision Petition No.2117 of 2018 and order dated 11.10.2018 in Review Application No.356 of 2018 preferred in the aforesaid revision petition.
- B 18. In this case, 160 IVPs of the denomination of Rs.5000/- each, were stated to have been lost and the claimant in this case and the claimant in the earlier matter are members of the same family. Similar relief was granted by the District Forum and the National Commission, which orders are presently under appeal before us.
- C 19. It is somewhat strange that only the IVPs were lost in both the cases by the family and no other instrument was lost. Be that as it may, for the reasons recorded in Civil Appeal arising out of SLP (Civil) Nos.16164-16165 of 2019, these appeals also deserve to be allowed.
20. We, therefore, allow these appeals, set-aside the view taken by the National Commission and dismiss the original complaint. No costs.

Ankit Gyan

Appeals disposed of.