

Calcutta High Court

Cesc Limited And Anr. vs The Chief Post Master General And ... on 20 January, 2004

Equivalent citations: AIR 2004 Cal 106, (2004) 1 CALLT 362 HC, 2004 (2) CHN 142

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Bench: A K Mathur, A K Banerjee

JUDGMENT A.K. Banerjee, J.

1. For the purpose of communication in the year 1898 Indian Post Office Act (hereinafter referred to as the "said Act") came into force. Under the provisions of the said act the Postal Authority is to act as a media for the purpose of communicating between the individuals as well as various organisations under the said Act for despatch of postal articles. The addressor is to affix postage for such particular article the rate of which is to be fixed from time to time by the Union of India by virtue of Parliamentary enactment. By the said Act the Government was empowered to frame rules under the said Act. Accordingly, rules framed which are called as Indian Post Office Rules (hereinafter referred to as the "said Rules"). Subsequently, the postal authority framed a guideline being called as "Post Office Code" which was time to time amended.

2. Under the post office guidelines any bulk consumer under the Indian Post Office Act has been given an opportunity to use a franking machine by which the bulk consumers would not have to affix postage stamp on each postal article by purchasing it from post office and/or other outlets. To avoid such hazards licence to use franking machine has been offered to the bulk users by which a stamp impression is to be given on the article intended to be despatched.

3. It has also been provided in the said guidelines that the bulk consumer would deposit the advance postage and the franking machine is accordingly adjusted taking into account the quantum of postage deposited in advance by the bulk consumer. In turn the bulk consumer would affix the impression on each article as per the rate prescribed by the postal authority and after such impression is put those postal articles would be deposited to the prescribed outlet of the postal authority and the postal authority in turn would dispatch the same to the respective addressees. The CESC Ltd. is one of such bulk consumers. The CESC Ltd. in order to send monthly bills availed franking machine facilities. The postal authority had also been given a space in the office of the CESC Ltd. to use it as an extension counter. The CESC Ltd. used to deposit postage in advance and in turn the franking machine was time to time adjusted. Impression was in turn put by the CESC Ltd. on the said electricity bills and those were deposited at the prescribed outlets for delivery to the respective consumers.

4. According to the postal authority the electricity bills were to be treated as Letter Mail. In the year 1997 the prescribed rate of postage was Rs. 2/- which was modified in the month of August, 1998 and became Rs. 3/-. Prior to June 1997 the rate was Re. 1/- and accordingly the money was deposited in advance by the CESC Ltd. at such rate. However, in June, 1997 when the rate was enhanced the CESC Ltd. ignoring such enhancement continued to post the electricity bills Re. 1/-. The said wrongful act continued even after August, 1998 when the rate was enhanced to Rs. 3/- and continued till October 29, 1998 when the same was detected for the first time by the postal authority at its Taratala outlet. Immediately, after the said mistake was detected the postal authority

immediately stopped accepting electricity bills with a franking impression of Rs. 1/-. The CESC Ltd. by their letter dated November 5, 1998 appearing at page 36 of the CESC Ltd.'s paper book (hereinafter referred to as Second Paper Book) contended that the CESC bills fell under the category of book post and not letter mail. However, they agreed to pay the difference as may be required on demand. The CESC Ltd. on and from October 30, 1998 paid Rs. 3/- per bill as postage cost without prejudice to their rights and contention.

5. The parties exchanged correspondence in this regard. Ultimately, by letter of demand dated June 18, 1999 the Vigilance Officer of the Postal Authority demanded a sum of Rs. 183,89,410/- as difference of postage which were required to be paid during the period June, 1997 to October 29, 1998. The reminder was sent by Vigilance Officer on July 26, 1999 and August 8, 1999. Ultimately the Post Master General, West Bengal Circle by his letter dated September 10, 1999 contended that unless the due amount was not deposited with the department, the department would be forced to direct that all postal articles would be withheld from CESC Ltd. as per Section 12 of the Post Office Act. Hence, this writ petition.

6. In the writ petition it was contended that the said notice of demand dated September 10, 1999 was without any authority and the Postal Authority was not within its power or authority or jurisdiction to demand such amount from the CESC Ltd, under the provisions of Indian Post Office Act, 1898. It was further contended that since it was a bona fide mistake committed mutually by both the parties the mistake could be rectified prospectively and not with retrospective effect. It was also contended that Postal Authority by their letter dated May 29, 1997 clarified that the postage would be Re. 1/- and as such postal authority was estopped from demanding the difference of amount as per the purported notice of demand.

7. The Postal Authority in their Affidavit-in-Opposition contended that the CESC Ltd. was bound to pay the postage as per the rate notified from time to time. Having not done so the difference of amount became due and payable by the CESC Ltd. and the postal authority was entitled to recover the same from the CESC Ltd. It was further contended that if the dues were not paid the postal authority were entitled to stop extending facility to CESC Ltd.

8. The writ petition was heard and disposed of by Mr. Pinaki Chandra Ghosh, J. by his judgment and order dated November 7, 2000. His Lordship came to conclusion that under Section 12 of the said Act of 1898 the Post Master General was the appropriate authority to recover the said sum by drawing up an appropriate proceeding before the Magistrate having jurisdiction under Section 12 of the said Act. The liability for payment of postage is on the addressee in case there is any deficit unless he forthwith returns it unopened and in case such article is returned unopened where the postal authority is entitled to recover the deficit from the addresser.

9. Considering the aforesaid two provisions His Lordship came to conclusion that since the bills were not returned unopened or refused by the addressee or that the addressee was dead or could not be found the postal authority had no authority in law to demand such deficit postage from the CESC Ltd. His Lordship also came to conclusion that paragraph 34 of the Post Office Guide had no application in the instant case. His Lordship also held that the impugned notice of demand dated

September 10, 1999 was signed by the Vigilance Officer and not the Post Master General and as such, such impugned notice had been issued by an officer without having any authority to issue the same and the same is thus void;

10. Ultimately, His Lordship quashed the said impugned notice of demand dated September 10, 1999. His Lordship, however, directed Postal Authority to consider the representation made by CESC on October 30, 1998 after giving then a hearing and till the said representation is not disposed of the entire deposit of Rs. 50.00 lakhs which was made by the CESC Ltd. in terms of the interim direction given by the learned single Judge would be kept with the Postal Authority. In case, it was found that the said amount was not payable by the CESC Ltd., the CESC Ltd. would refund the same and in case it was found that the said amount was due and payable by CESC Ltd. the Postal Authority would adjust the same against their dues. The Postal Authority filed the first appeal against the order of the learned single Judge to the extent which had quashed the notice of demand by holding that the Postal Authority had not authority to collect the outstanding so demanded.

11. The second appeal was filed by the CESC Ltd. on the ground that once the learned Judge held that the impugned notice was bad further direction to continue with the deposit of Rs. 50.00 lakhs was not appropriate and was liable to be set aside.

12. To appropriate the problem in hand let us first discuss the relevant provisions of the Act as well as rules and/or guidelines.

13. Under Section 11 of the said Act deficit postage for any particular postal article was to be recovered from the addressee at the time of delivery. In case the postal article is not delivered by dint of refused or any other reasons prescribed in the said section the addresser is bound to pay the same.

14. Under Section 12 of the said Act in case of any person refusing to pay any postage. Post Master General is authorised to recover such sum by drawing up an appropriate proceeding before the Magistrate having jurisdiction. The Post Master General under the said section is also authorised to direct withholding of delivery of any postal article to that person.

15. Under the said rules in case of insufficient postage the deposit would be recovered twice the amount of difference.

16. On a plain reading of the rules it appears that in case of delivery of the postal article costs are to be paid in advance.

17. Under the Postal Guidelines called as Post Office Code special benefit has been given to the bulk users and there too postage in advance are to be paid. Under the Post Office Guide frank machine can be used by bulk consumers under paragraph 11 after obtaining necessary licence from the Postal Authority. Under the said guidelines accounts are to be maintained by two registers one by the Post Office and other by the user. It was provided that in any event of any breach of any condition of the licence, the licence would be forthwith cancelled by the head of the Postal Circle and any sum that

might be due to the licensee on account of the postage advance would be refunded to the licensee as well as any sum that may be due to the department on account of postage would be recovered from him.

18. Paragraph 11.5(XV) being relevant herein and is quoted below:--

"In the event of a breach of any condition of the licence, the licence will be forthwith cancelled by the head of the Postal Circle who will not be responsible for any loss which the licensee incurs thereby. Any sum that may be due to the licensee on account of postage advanced will, however, be refunded to him and any sum that may be due to the department on account of postage will be recovered from him."

19. Paragraph 34 of the said guideline also provided that in the event of any breach of any prescribed condition the licence would be forthwith cancelled and the Postal Authority would be entitled to recover any sum that may be due to the department from the licence. Paragraph 34 being relevant herein and is quoted below:--

"In the event of breach of any of the prescribed conditions the licence will be forthwith cancelled by the licensing authority who will not be responsible for any loss which the licensee may incur thereby. Any sum that be due to the licensee on account of postage advance will, however, be refunded to him and any sum that may be due to the department on account of postage will be recovered from him."

20. We have perused the said Act of 1898 as well as the general rules and guidelines: From the entire scheme of Act and the Rules it would appear that the postage would be paid in advance save and except one or two prescribed mode like value payable by post etc. It is an admitted position that the electricity bills were to be posted by pre paid postage in case the CESC Ltd. would avail the usual mode of service by affixing postage stamp on the bills and if any bill was insufficiently stamped the provisions of Sections 11 and 12 could have applied. In such event, if the postal authority inadvertently delivered to the said letter to the addressee without demanding the deficit postage the CESC Authority could not have been held responsible for the same Sections 11 and 12 of the said Act have application in case of general mode of service. The bulk use through frank machine cannot contemplate a situation which could warrant application of Section 11. In case of frank machine there is no scope for insufficient postage being paid. From the guidelines it would appear that a licensee of a frank machine would have to deposit in advance the total postage and the machine is accordingly reset by the postal authority. After impression is put on the postal articles those are deposited with the prescribed postal, outlet. The postal authority at the time of accepting such articles would examine the same and is entitled to refuse acceptance of such article in case of appropriate impression being not put. Such advantage is not available to the postal authority when a letter card or postal article is dropped in a letter box. Under guidelines postal articles with frank machine impression cannot be accepted through letter boxes. In this regard paragraph 8 of the said guidelines being relevant herein and is quoted below:--

"Machine franked articles posted in letter boxes shall be treated as unpaid articles. Unregistered articles bearing impressions of the previous date shall also not be accepted."

21. This provision has been made to avoid a situation contemplated under Section 11. Hence, in case of a frank impression Section 11 has no application.

22. The present case is a unique case. Despite all precautions stipulated in the guidelines the postal authority accepted posting of articles with insufficient stamp for about 1 and 1/2 years until it was detected by Taratala Office on October 28, 1998. It was a gross mistake on the part of the postal authority. The Postal Authority should not have accepted such articles with insufficient postage. In this regard paragraph 30(iv) being relevant herein and is quoted below:--

"Office which accepts the posting should check the bundles to see if various articles have been franked for correct postage and also the total value of the articles tallies with the details given in the dispatch slip and that entries in column 1 to 3 of the franking machines register of posting have correctly been made. A separate dispatch slip should be there for articles franked with different machines. He will then put his initials, date and date stamp in the franking machine register of postings and return the same to the licensee or his agent."

23. The aforesaid provisions prescribes that the office at the time of accepting the posting should check whether the articles were franked for correct postage. The postal authority failed to act in terms of the said clause while accepting the said postal articles.

24. The CESC Ltd. was also guilty of such latches as the postage was not properly paid as would appear from the relevant schedule for postage. We are constrained to say that the postal authority being a governmental authority as well as CESC Ltd. discharging public duty have contributory negligence which had resulted in loss to the public exchequer to the extent of couple of crores.

25. In our view if the postal authority had acted erroneously and the CESC Ltd. obtained benefit out of it for such wrongful action on the part of the erring postal officials the CESC Ltd. was not entitled to take advantage of such wrong. There cannot be estoppel against any illegal act. Postage was paid insufficiently violating the statutory provisions of law. Hence, Government is entitled to recover the same in accordance with law.

26. From the aforesaid discussion it is clear to us that under the postal guideline specially under paragraph 11.5 (xv) and 34 of the Post Office Code read with Section 12 of the said Act of 1898 the Post Master General is the appropriate authority to take appropriate steps for recovery of the said dues. The Post Master General being the head of the circle is also entitled to deny acceptance of postal articles from the CESC Ltd. The learned Judge completely overlooked the fact that the impugned notice of demand was issued by the Post Master General himself and not by the Vigilance Officer. It is true that the earlier notices were issued by the Vigilance Officer. However, the ultimate notice of demand which was impugned in the writ petition being dated September 10, 1999 was issued by the Post Master General, West Bengal Circle himself and not through any other subordinate officer. The learned Judge, in our view, erroneously held that the said notice issued by

Colonel S.K. Das was notice from the Vigilance Officer and not by the Post Master General. In our view the learned counsel appearing for the parties failed to draw the attention of the learned Judge to annexure-I to the writ petition appearing at page 46 of the second paper book which would clearly demonstrate that the said letter was issued by the Post Master General himself. Hence, such finding of the learned Judge is erroneous.

27. The learned counsel for the parties referred to various decisions of the Apex Court as well as one of Privy Council. Let me now deal with the cases cited by the parties.

(i) (Ramchandra Keshav Adke v. Govind Joti Chamare and Ors.): In this case the Apex Court held that when a power is given to do certain thing in a certain way the thing must be done in that way or not at all and other methods of performance are necessarily forbidden.

(ii) AIR 1936, Privy Council, page 253 (Nazir Ahmed v. Emperor): When a power is given to do a certain thing in a certain way the thing must be done in a certain way or not at all.

(iii) (University of Kashmir v. Dr. Md. Yasin): Paragraph 8 of this judgment has been relied on by the CESC Ltd., the Apex Court in this case held that when a statute creates a body and vests it with authority and circumstances its powers by satisfying limitation, the doctrine of implied engagement de hors the provisions and powers under the Act would be subversive of the statutory scheme and cannot be countenanced by the Court. In the instant case the Post Master General is the appropriate authority appointed by the statute under Section 12. Hence, we do not find how ratio decided in this case can help the CESC Ltd.

(iv) (Union of India v. Md. Nazim): Paragraph 8 of this judgment has been relied on by the CESC Ltd. in this paragraph it was held that the post office is not an agent of the sender of the postal article for reaching it to the addressee. It is really a branch of public service. How this paragraph is relevant in the instant case is not intelligible to us.

(v) (M. Karunanidhi v. Handa): In this case it was held that when the Representation of Peoples Act provided a complete code for challenging an election must be challenged in the manner provided. Where a right or liability is created by a statute which gives a special remedy for enforcing it the remedy provided by that statute only must be availed of.

In the instant case Section 12 read with paragraph 11.5(xv) and 34 of the Post Office Code empowers the postal department through the Post Master General to recover any sum due from the licensee as also to stop accepting postal articles from the concerned licensee. Hence, the remedy provided under the statute was availed of by the postal authority and this case cannot in any way help the CESC Ltd.

(vi) (Union of India v. Kriloskar Pneumatic Co. Ltd.): Paragraph 9 and 10 of this judgment has been relied on by the CESC Ltd. Considering Section 27 of the Customs Act as amended it is amounting the Apex Court held that under Sub-section 3 of the amended Section 27 a claim for refund or order of refund can be made only in accordance with the provisions of the Section 27 and not by any other

means. Since we have held that the postal authority was within their right to claim such amount as well as refuse acceptance of articles this proposition of law cannot in any way help the CESC Ltd.

(vii) (Commissioner, Bangalore Development Authority v. S. Vasudeva and Ors.): Paragraph 11 of this judgment has been relied on by CESC Ltd. Here the Apex Court held that the Government has no power to issue any directions which are in conflict with the provision of the Act and by necessary implication in conflict with the rules framed under the Act. This is well settled proposition of law and has been discussed in the case of Kriloskar Pneumatic Co. Ltd. (supra) and we do not find any support from this judgment in favour of CESC Ltd.

28. Hence, the postal authority through the Post Master General, West Bengal Circle was completely empowered under paragraph 11.5(xv) and 34 of the Post Office Code read with Section 12 of the said Act of 1898 to recover the outstanding sum remaining due by the license being the CESC Ltd. to the postal authority. At the same time the Post Master General was also competent enough to direct denial of acceptance of postal articles from the licensee being the CESC Ltd, unless and until the outstanding is paid and the finding of the learned Judge to the contrary on that score is wrong is set aside.

Similarly the finding of the learned Judge that the impugned notice of demand was issued by the Vigilance Officer, was clearly wrong as discussed hereinbefore and is hereby set aside.

29. Now comes the second appeal of the CESC Ltd. against the later part of the order of the learned single Judge which directed continuance of deposit of Rs. 50.00 lakhs till the representation is considered by the postal authority. In our view, since the Post Master General was entitled to issue the notice of demand as we have held herein the question only remains as to whether the concerned postal article being the monthly electricity bills were to be considered as book parcel or letter mail or any other category. According to the postal authority it was a Letter Mail and was to be charged Rs. 2/- during the period June, 1997 to August, 1998 and thereafter Rs. 3/- The CESC Ltd. relied on various communications of the postal authority including the letter dated May 29, 1997. Such issue can only be and should be examined by the Post Master General himself. Lot of arguments were made in this regard by Mr. Mitra appearing for the CESC Ltd. as well as Mr. Sarkar appearing for the postal authority. Whether a particular postal article is called as book parcel or letter mail can be effectively dealt with administratively by the Post Master General. Hence, the learned Judge to that extent was right in directing the representation to be considered by giving personal hearing to the CESC Ltd. The learned Judge was also right while directing continuance of deposit of the said sum of Rs. 50.00 lakh as and by way of interim measure. Hence, we do not incline to interfere with that part of the order of the learned single Judge which had directed representation to be considered by keeping the said Rs. 50.00 lakhs in deposit till the disposal of the representation.

In the result the appeal of the postal authority 1 in part and consequently the appeal of the CESC Ltd. is dismissed. There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

A.K. Mathur, C.J.

30. I agree.