



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.1435 of 2015

and

M.P(MD)No.2 of 2015

1. The Chief Postmaster General,
Anna Salai, Chennai.
2. The Postmaster General,
Southern Region, Madurai.
3. The Senior Superintendent of Post Office,
Palayamkottai, Tirunelveli Division,
Tirunelveli.
4. The Postmaster,
Palayamkottai Head Post Office,
Palayamkottai - 627 002.

: Appellants/Respondents

Vs.

Jeyasekaran

: Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 09.01.2015 in W.P (MD).No.2566 of 2011.

Prayer in WP(MD). 2566/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in H/EPP - REBATE / Dlgs dated at Tirunelveli - 627 002 the 23.09.2009 quash the same and consequently direct the respondents to pay a sum of Rs.23,27,142/- along with interest retained by the respondent within a time frame as fixed by this Honourable Court.

For Appellants : Mrs.L.Victoria Gowri
Central Government Standing Counsel

For Respondent : Mr.J.Anandkumar

**JUDGMENT**

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

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The official respondents in W.P.(MD)No.2566 of 2011 are the appellants herein.

2.The respondent / writ petitioner made a challenge to the proceedings of the fourth appellant herein dated 23.09.2009, in and by which, a sum of Rs.23,27142/- was ordered to be retained by way of recovery as per the orders of the second appellant herein with regard to the short collection of postage.

3.The writ petition after contest, came to be allowed vide impugned order dated 09.01.2015 and making a challenge to the said order, the present writ appeal is filed by the official respondents in the writ petition.

4.Facts leading to the present litigation have been narrated in detail and in extension, in the impugned order passed in the writ petition which is the subject matter of challenge and in order to avoid repetition, the facts are not restated. However, this Court is culling out the relevant and necessary facts for the disposal of this writ appeal.

5.It is not in dispute that on introduction of Express Parcel Post service (EPP), the respondent / writ petitioner was approached by the postal department, to utilise the said service and the respondent also agreed and started posting of EPP as well as VP EPP parcels through Radhapuram Sub Post Office, with effect from 14.07.2000, by pre-payment system. The respondent / writ petitioner is also entitled to payment and rebate and he demanded the same and it was also allowed by the second appellant after getting legal opinion.

6.The stand of the appellants is that while paying the said rebate amount, a sum of Rs.23,20,012/-, shortage of postage was ordered to be recovered as per Section 12 of the Post Office Act, 1898 [hereinafter referred to as "the Act"] and it was also recovered by the fourth appellant and the remaining amount of Rs.35,23,754/- was paid to the respondent / writ petitioner by way of rebate.

7.The learned Judge found that in order to effect such a recovery, the appellants are under mandate to follow Section 11 and 12 of the Act, and since they did not follow, has quashed the impugned proceedings of the fourth appellant with a further direction directing the appellants / official respondents to pay the said amount to the respondent / writ petitioner.



8. The learned Counsel appearing for the appellants / official respondents has invited the attention of this Court to the materials placed on record and would submit that the position of the respondent / writ petitioner is that of the bailor and therefore, the provisions of contract would have full application on the case on hand and since the petitioner, while despatching the parcels did not pay the correct postage and after it was detected on 10.09.2001, repeated communications were sent to the respondent / writ petitioner to make good the deficit and it was not paid and however, he also started to make a demand to us for rebate and though he do not have any tenable claim to get that amount, the second appellant after getting the legal opinion has paid the sum and out of the rebate amount has retained a sum of Rs.23,27,142/- payable to them as shortage.

9. It is the further submission of the learned Counsel appearing for the appellants / official respondents that in the facts and circumstances of the case, Section 11 of the Act has no application on the case on hand and insofar as the application of Section 12 of the Act is concerned, it is her submission that it should be treated as fine and appropriate orders to be passed by the Magistrate having jurisdiction and the learned Judge ought to have remanded the matter, to follow the correct procedure contemplated under Section 12 and however, straightaway allowed the writ petition directing the respondents to pay a sum of Rs.23,27,142/-, to the petitioner and hence prays for interference.

10. Per contra, the learned Counsel appearing for the respondent / writ petitioner has invited the attention of this Court to Sections 11 and 12 of the Act and would submit that the mandatory procedures contemplated under the said Act have not been adhered to by the appellants and would further add that the matter in issue is squarely applicable to the case reported in **(2012) 6 SCC 286 (CESC Limited Vs. Chief Postmaster General and others)** and prays for dismissal of this writ appeal.

11. This Court paid its best attention to the rival submissions and also perused the materials placed before it as well as the decisions relied upon by the learned Counsel appearing for the respondent / writ petitioner.

12. It is relevant to extract Sections 11 and 12 of the Post Office Act, 1898.

"11. Liability for payment of postage: (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due, shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened:



Provided that, if any such postal article appears to the satisfaction of the Post Master General to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due, is refused or returned as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act."

12. Recovery of postage and other sums due in respect of postal articles: If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the post office authorised in this behalf by the written order of the Post Master General, be recovered for the use of the post office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may for the time being be resident; and the Post Master General may further direct that any other postal article, not being on government service, addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid."

13. The scope of the said provisions came up for consideration in the above cited decision of the Hon'ble Supreme Court and it is relevant to extract paragraph Nos. 30 and 31 of the said decision:

"30. Thus from Section 11 it is clear that the "addressee" will be liable to pay the deficit postal charges, if any, once the addressee accepts the postal article or opens it. On the other hand, the "sender" will be liable to be charged for the deficit postage, if it is detected at the time of postage or if the addressee refuses or returns the postal articles or if the addressee is dead or cannot be found. If such amount is found due from the sender, the Postal Authority is empowered to recover the sum due from the sender under Section 12 of the Act.

<https://hcservices.ecourts.gov.in/hcservices> 31. It is not the case of the Postal Authority that any of the postal articles has been refused or



returned by any of the addressees or any addressee is dead or could not be found. In absence of any such allegation no charge can be made from the sender Company under Section 11 and the Company cannot be made liable to pay the postage or sum due thereon for franking @ Re 1 per bill for postage and for that there was no occasion for the authority to exercise power under Section 12 to recover such due from the sender Company."

14. Admittedly, in the case on hand, the respondent / writ petitioner, being a sender can be mulcted with the liability to be charged for the deficit postage, if it is deducted at the time of postage or if the addressee refuses or returns the postal articles or if the addressee is dead or cannot be found. A perusal and consideration of the facts of the case would disclose that the contemplations provided under Section 11 of the Post Office Act, have not been put in place.

15. Even for the sake of arguments that Section 11 of the Act has been adhered to, still, the fourth respondent cannot straightaway appropriate the alleged deficit stamp amount for the reason that the second respondent mandates that the said amount should be treated as a fine imposed under the Act and it can be recovered by a Magistrate having jurisdiction where that person may for the time being be resident.

16. The learned Judge has rightly taken note of the factual aspects and legal position and concluded that the provisions of Section 11 and 12 of the Act have not been adhered to and rightly quashed the impugned order passed by the fourth appellant / fourth respondent in the writ petition.

17. This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for allowing the writ petition and find no merit in this writ appeal.

18. In the result, the writ appeal is dismissed confirming the order dated 09.01.2015 made in W.P.(MD)No.2566 of 2011. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True copy/



To

1. The Chief Postmaster General,
Anna Salai, Chennai.

2. The Postmaster General,
Southern Region, Madurai.

3. The Senior Superintendent of Post Office,
Palayamkottai, Tirunelveli Division,
Tirunelveli.

4. The Postmaster,
Palayamkottai Head Post Office,
Palayamkottai - 627 002.

+1cc to Mrs.L.Victoria Gowri, Advocate Sr.No.53511

+1cc to P.Thilakumar, Advocate SR.No.53202

MR

VB/SKN/RSK/SAR4/21.03.2018/6P/7C

JUDGMENT MADE IN
W.A(MD) No.1435 of 2015
06.03.2018