

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

Ct. No.9  
Item No.3  
CP/GB

Present:  
Hon'ble Justice Shampa Sarkar

**WPA 14252 of 2024**

Indrajit Ghosh @ Shibu Ghosh &anr.  
vs.  
Union of India &ors.

For the Petitioners : Mr. Sanjay Mukherjee  
Mr. Bhaskar Chakraborty  
Mr. Subrata Mukherjee  
Mr. Arghadeep Das

For the Union of India : Mr. Ashoke Kumar Chakraborty, Ld. ASGI  
Mr. TirthaPatiAcharyya

For the State : Mr. BiswaBrataMallick, Ld. AGP  
Mr. DebrajShau

Hearing concluded on :02.09.2024  
Judgment on :02.09.2024

**Shampa Sarkar J.:-**

1. The writ petition has been filed for a mandamus directing the postal authorities to disburse and settle the claim of the writ petitioners including the interest on the investment made by the petitioners from time to time in the post offices. The principal amount claimed is Rs.15,34,400/- with interest accrued from the date of investment till the date of maturity. The petitioners submit that the postal authorities cannot deny their responsibilities in settling the claim, in view of the fact that passbooks were issued by the post offices with their seal and stamp and the agent

authorized by the postal department had committed the fraud, in collusion with the employees of the postal department. Thus, the postal authorities have a vicarious liability to settle the claim of the petitioners.

2. Mr. Mukherjee, learned advocate for the petitioners, submits that the postal authorities were trying to protect their own employees and did not lodge an FIR against them. The FIR was only lodged against the agent, namely, Mitali Das. Those employees who were available at the relevant point of time and who were involved in the fraudulent activities, were allowed to go scot free. The misappropriation of funds of the petitioners could not be attributed to Mitali Das alone, when the pass books which were supplied to the petitioners bore the official seal of the concerned post office.
3. It is submitted that a writ of mandamus can be issued against the postal authorities, to settle the claim of the petitioners. An employer is liable for misdeeds of its employees. The relationship of trust between the post offices and the petitioners, has a public law element, which empowers the writ court to intervene in such a situation. Reliance has been placed on the following decisions:-
  1. Canara Bank vs. Canara Sales Corporation &ors., reported in (1987) 2 SCC 666,
  2. Pradeep Kumar &anr. Vs. Postmaster General &ors., reported in (2022) 6 SCC 351,
  3. Sulekha Chatterjee &anr. Vs. Union of India &ors. in WPA 22608 of 2013,
  4. United India Insurance Co. Ltd. vs. Sjjad Hussain &ors., in MA No. 235 of 2012.

4. Relying on the decision of Sulekha Chatterjee &anr. (supra), Mr. Mukherjee submits that a coordinate Bench had held that the post office worked on the trust it had built over decades in the citizens. It was the sacred duty of the postal department to continuously uphold such trust. Breach of such trust was not just limited to a single person, but the same affected the conscience and trust of the citizens towards the postal system. The postal system was the life blood of the Indian republic. His Lordship was of the view that in the facts of the case before His Lordship, the postal department was made liable to settle the claim of the writ petitioner.
5. In the decision of Canara Bank (supra), the Hon'ble Apex Court held that in a suit for recovery of a sum of money withdrawn from the bank by another defendant, the plea of the bank that as the cheques were not forged and one of the persons associated with the plaintiff had withdrawn the money, could not be accepted. The Hon'ble Apex Court held that the bank could not escape its liability unless there was enough material to show that the plaintiff was in knowledge of the cheques and the factum of withdrawal of the money. The bank was made liable.
6. Pradeep Kumar &anr. (supra) was relied upon for the proposition that the doctrine of contributory negligence would be applicable against the post office, for acts and deeds of its employees.
7. The learned Additional Solicitor General urges the point of maintainability of the writ petition on the ground that a similar prayer had been made before a coordinate Bench and the coordinate Bench had directed the post office to consider settlement of the petitioners' claim. The post office did not settle

the claim on the ground that the petitioners could not produce the original pass books. The petitioners claimed to have deposited the same with the police. The matter went up in contempt before His Lordship and His Lordship was of the opinion that refusal to settle the claim did not amount to contempt. The post office had given its adequate thought to the matter, called the petitioners for a hearing, made an enquiry with regard to the issuance of the original pass books and communicated its decisions. The coordinate Bench held that the petitioners were at liberty to proceed with the criminal case and also proceed against the postal department if the postal department did not take adequate steps against Mitali. Thus, according to the learned ASG, the issue was now limited to the proceeding against Mitali.

8. Learned ASG further submits that trial had commenced pursuant to the closure of investigation against Mitali and her family members on the basis of the complaint lodged by the petitioners. The postal authorities also lodged multiple FIRs against Mitali.
9. Mr. BasuMallick, learned AGP submits that on the basis of the complaint, the police has completed the investigation and the matter is before the jurisdictional court at the stage of trial.
10. The issue in this case is whether the postal authority should be asked to pay the money to the petitioners. In WPA 6471 of 2023, the first prayer made by the writ petitioners as well as the ad interim prayer were as follows:-

“(a) A writ in the nature of Mandamus by directing the Respondents, their men, agents, servants and each one of them to disburse the

Petitioners' matured all matured Fix (sic) Deposit amount with interest in favour of the Petitioner; \*\*\*

- (e) Ad-interim order by directing the Respondents to disburse the Petitioners' all matured Fix (sic) Deposit amount of Rs.15,34,400/- (Rupees Fifteen lakh thirty four thousand four hundred) only with 13.10% interest and with delayed compensation forthwith in favour of the Petitioner;"

11. Similar prayers have been made in this writ petition. Upon consideration of the prayers in the earlier writ petition, the coordinate Bench directed the respondent no. 4 therein to give effect to the communication of the Assistant Director of Postal Services (II), Kolkata Region, by attempting a mutual settlement of the financial claim of the petitioners on the maturity of the purported account. If any mutual agreement was arrived at, the same would be irrespective of the criminal consequences in the trial. The petitioners approached His Lordship alleging contempt. It was alleged that despite a specific direction upon the postal authorities to mutually settle the claim, no steps were taken by the postal authorities to pay the amount to the petitioners.
12. The learned ASG filed a report in the contempt proceeding, which was taken on record. It was observed by His Lordship that the report disclosed several mismatches on the claims of the petitioners. The original pass book was asked for, but the petitioners could not produce the same. It was also observed that the primary allegation was against Mitali. Mitali was not appointed as an agent by the Department of Posts, Government of India but by the Deputy Director, Small Savings, Finance Department, Government of West Bengal. Upon recording that the criminal case was pending against Mitali at the behest of the petitioners, it was held that the postal department

was not guilty of contempt, by not having settled the claim. The relevant paragraphs of His Lordship's order are quoted below:-

- “5. A careful consideration of the original order under contempt reveals that the same only contained a direction on the postal authorities to explore the opportunities of a mutual settlement of the claims of the petitioners. Since the postal authorities have done sufficiently in that regard by not only giving a hearing to the petitioners on such count but also trying to ascertain the genuineness of the claims by going through the documents handed over by the petitioners, it cannot be said that the alleged contemnor is in contempt of court. Rather, the relief of the petitioners lies against the said Mitali Das who allegedly swindled the petitioners, regarding which criminal cases are pending.
6. Insofar as the argument that the postal authorities have failed to initiate any proceeding against Mitali Das is concerned, the said allegation is entirely beyond the purview of the original writ petition and, as such, cannot be gone into independently by the contempt court while hearing a contempt application, which is limited to alleged violation of the original order passed by this court.
7. In such view of the matter, keeping the report on record, this court is of the opinion that sufficient compliance has been done with regard to the order of this court.
8. Accordingly, CPAN 1666 of 2023 is disposed of in the light of the above observations.
9. It is, however, made clear that nothing in this order shall preclude the petitioners from proceeding with the criminal cases lodged on the basis of the petitioners' complaint against the SAS agent and/or seeking further relief by way of a fresh challenge in the event the petitioners are aggrieved by the inaction of the postal authorities in not taking any steps against Mitali Das in any manner.”

13. Thus, the first prayer in this writ petition is similar to the prayer made in the earlier writ petition, which was not allowed. A direction was passed for a mutual settlement. The postal authorities pointed out the mismatches before His Lordship and His Lordship was satisfied that no contempt had been committed because the enquiry revealed that the claim could not be settled. The relief of the petitioners was against Mitali. His Lordship gave liberty to the petitioners to proceed against Mitali in accordance with law

and also proceed against the postal department if they failed to take steps against Mitali.

14. Records reveal that the complaint of the petitioners ended with the filing of a charge-sheet and trial is going on. It also appears that the postal department had filed complaints against Mitali. Such complaints against Mitali by the postal department, also ended in charge-sheets.
15. Thus, various complaints have been lodged against Mitali's fraudulent activities by the postal department. Even though, there is no such document on record which shows that a specific allegation with regard to the petitioner's account had been made, but Mitali's alleged fraudulent activities, misappropriation, cheating etc. were subject matters of investigation at the instance of the postal department as well and such investigations surely would cover the issues relating to the alleged fraud played upon the petitioner.
16. It also appears that the complaint of the petitioner ended in a charge-sheet. The charge-sheet records that Mitali, Partha and Kajal Das were the charge sheeted accused persons. The charge-sheet reveals the investigation was also against the postal department's officers. Column 13 of the charge-sheet indicates that the sub-postmaster of Lake Town post office and the sub-postmaster of SechBhawan post office were requested to be discharged.
17. Column 17 of the charge-sheet indicates how the police authorities had investigated the matter and arrived at the, prima facie, conclusion that Mitali, Partha and Kajal were responsible for misappropriation of the money to the tune of rupees 14,28,500/-. The IO recorded that he examined the

complainant and requested the complainant to produce relevant documents and witnesses. The IO contacted with the then postmaster of the Lake Town Post Office and SechBhawan Post Office. That only Mitali, Partha and Kajal should stand trial in open court. The witnesses would prove the fact during trial. The sub-postmaster of Lake Town post office and sub postmaster of SechBhawan post office should be discharged from the case as no tangible evidence could be gathered against them. The police authorities reserved the right to submit supplementary charge-sheet on receipt of further details and particulars about the postal department's officials who were serving at the relevant point of time and upon obtaining the handwriting expert's opinion. The result of the investigation was also informed to the complainants, i.e., petitioners.

18. Thus, it cannot be said that the postal department was insulated from the investigation. The police authorities filed the charge-sheet and asked for discharge of the sub-postmasters of the post offices. They reserved the right to file a supplementary charge-sheet upon gathering further materials and upon obtaining opinion of the handwriting experts. All these aspects were informed to the petitioners. If the petitioners were aggrieved by the discharge of the officers of the postal department or the fact that the police authorities did not find any evidence against them, the remedy of the petitioner was before the criminal court.
19. The issue of vicarious liability will arise only if there is evidence that the personnel of the postal department were involved and the seal and stamp were endorsed by them in the pass books, while discharging their official

duty. The evidence should have surfaced either in the criminal proceedings and/or in a civil suit. In this case, the charge-sheet clearly mentions that they were not involved as there were no materials against them. The charge-sheet also mentions that in furtherance of such investigation, if at a later stage any materials are discovered, the same would be placed before the court. Neither the petitioners can satisfy the court nor the records indicate what happened thereafter, although it appears that trial has commenced and the petitioner No.1 had already deposed.

20. In his examination-in-chief, the petitioner Indrajit Ghosh submitted that the money used to be deposited at the post office through Mitali Das. She had handed over the original passbook with the stamp and signature of the postmaster and 23 such passbooks had been given to him. Mitali took steps for opening the postal accounts which were mentioned in the passbook.
21. Thus, unless there is a specific finding with regard to the involvement of the employees of the postal department, the writ Court cannot transform itself into a fact-finding court by receiving evidence and arrive at the conclusion that the employees of the post office were involved in such fraud. The criminal court has ample power to pass orders for payment of fine if Mitali, Partha and Kajal are found guilty.
22. Further, the contention of the petitioner that the postal department did not proceed against its own employees, cannot be accepted when the petitioners did not take any steps after having received the charge sheet. The investigating agency had clearly recorded that no materials could be found against the sub postmasters of the two post offices. Whether the petitioners

proceeded further in the matter and approached the criminal court for a reinvestigation or further investigation in this regard against any of the officers of the post office, is not available.

23. Under such circumstances, the decisions of the Hon'ble Apex Court would not apply as there are sea of differences in the facts before the Hon'ble Apex Court and before this Court. One of the cases before the Hon'ble Apex Court was in a suit in which evidence was received and the other one was in a proceeding arising out of the Consumer Protection Act, 1986 where evidence was also received and the matter went up to the Hon'ble Apex Court. The coordinate bench also recorded that Mitali was neither an employee nor an agent of the postal department but an agent of the small savings department of the government of West Bengal. As an agent of the small savings department, she could deposit money in the post offices on behalf of the clients. Soon, upon discovery of Mitali's fraudulent activities, F.I.Rs were lodged by the postal department and on the complaint of the postal department, her agency was discontinued.
24. The decision of this court in ***Shulekha Chatterjee and another (supra)*** is also distinguishable on facts as in that case, F.I.R had already been lodged by the post office against the agent Tapan Kumar Mallick, postmaster of Burnpur market SO and Kartik Chandra Mandal, the then postmaster of Burnpur market SO. His Lordship was of the opinion that such complaint proved that the employer was also convinced that the employees were involved in the fraud.

25. Under such circumstances, the writ petition does not deserve any further orders on the facts stated hereinabove. The petitioner is estopped from raising the issue once again, by a fresh writ petition. The principle of issue estoppel will apply in this case as His Lordship held that not settlement of the claim was not contempt on the part of the postal authorities. His Lordship held that there were several mismatches and the relief of the petitioners were against Mitali.
26. Accordingly, the writ petition is dismissed.
27. The order is restricted to the dismissal of the writ petition and it is not an opinion of the court on the issues pending before the learned criminal court. As no affidavits have been called for, the allegations are deemed to be denied.
28. Parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**