

**IN THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, KOLLAM
PRESENT**

SMT. S.K.SREELA, B.A.L, LL.B, PRESIDENT

SMT.S.SANDHYA RANI, BSC, LL.B, MEMBER

SRI. STANLY HAROLD, BA, LL.B, MEMBER

CC.No.34/2019

ORDER DATED 6TH DAY OF OCTOBER 2023

BETWEEN

Nisha : **Complainant**
Nijesh Nivas
Neeleswaram P.O
Kottarakkara.
[By **Adv.S.Pushpanandan**]

AND

1. The Postman : **Opposite parties**
Bichu
S/o Babu, residing at
Bichu Nivas
Neeleswaram Post Office
Neeleswaram, Kottarakara.
2. Post Master
Neeleswaram Post Office
Neeleswaram, Kottarakara.
3. Senior Superintendent of Post Office
Kollam Division, Kollam.

ORDER

SMT.S. SANDHYA RANI, MEMBER

This is a case based on a complaint filed u/s 12 of the Consumer Protection Act 1986.

The averments in the complaint in short are as follows:-

The complainant is a B.sc Computer Science graduate and also passed HDC and BM. Thereafter the complainant registered her name in the town Employment Exchange, Kottarakkara for getting employment and after that the name of the complainant appeared in the seniority list also. Later the authority of Employment

Exchange sent an interview letter to the complainant for attending the interview before the Board of Directors of the Velinalloor Service Co-operative Bank. But the said letter was not served to the complainant by the 1st and 2nd opposite parties and hence she could not attend the interview and the bank reported that the complainant has not attended in the interview as directed by the employment exchange. It is further alleged that the 1st opposite party Bichu is a close relative and neighbour of the complainant and there is a family dispute between the complainant and the 1st opposite party regarding the property of one Gopalan @ Swami who was unmarried and died interstate. Due to that enmity the 1st opposite party deliberately not delivered the letter to the complainant. The complainant and 1st opposite party are born and brought up at Neeleswaram and they are relatives and neighbours. In the circumstances it is to be presumed that the 1st opposite party has not delivered the letter to the complainant with bad intention to take revenge to the complainant and her family members. So the opposite parties No.1 to 3 are jointly and severally liable to pay compensation to the complainant.

The complainant visited the bank on 14.06.2018 and thereupon the bank authorities reported that on 08.05.2018 the bank had sent a registered letter to the complainant from Karinganoor post office to Neeleswaram post office. Thereafter on 18.06.2018 the complainant enquired the matter before the Neeleswaram post office, but they have not given any satisfactory explanation to the complainant.

The complainant is an OBC category and beyond the age of getting job. If the complainant attended the interview definitely she would have obtained the job. Due to the above act of the 1st opposite party the complainant has sustained irreparable loss and injury. The non delivery of the letter is deliberate, dereliction of duty on the part of opposite parties No.1&2 which caused the life of the complainant in dark. The above non action of the opposite parties amounts to deficiency in service on the part of the opposite parties and therefore the complainant is entitled to get compensation from all the opposite parties jointly and severally. The complainant pray to award compensation to the tune of Rs.2,00,000/-. Hence the complaint.

All the opposite parties filed joint written version through 3rd opposite party by raising the following contentions. It is admitted in the joint version that Registered letter No.RL0369373151IN dated 08.05.2018 booked from Karingannur Post Office, addressed to the complainant was received at Neeleswaram Post Office on 09.05.2018. It is further admitted that the said registered letter was entrusted to the delivery agent of Beat No.1 Sri. Vipin on the same day for effecting delivery. It is contented that the post of delivery agent, Beat No.1 was actually vacant and Sri. Vipin was an outsider engaged in the post to look after the duties of the post on a stop gap arrangement. The delivery agent returned the article with remark "Not Known" and hence the same was entrusted to the other delivery agent working in Beat No.II on 10.05.2018. The charge of Beat No.II was Sri.Bichu.B who was also an outsider engaged in stop gap arrangement. The said Bichu had also returned the registered letter with remarks "Not Known". Hence the letter was returned to the sender from the post office with remarks "not known". It is further admitted that during the course of enquiry it is found that the addressee was actually a resident under the delivery beat of delivery agent No.II Sri.Bichu.B. According to Sri.Bichu.B, on receipt of the article, he had made enquiries about the addressee but was unable to identify/locate her, and hence returned the article with remarks "Not Known". Since both the delivery agents were not able to identify the addressee, the Branch Post Master returned the registered letter to the sender with remarks "Not Known". It is also admitted in the written version that the addressee of the article had preferred a complaint with customer care centre, Kollam on 21.06.2018 alleging non delivery of the said article. After the conclusion of enquiry, the stop gap arrangement of Sri.Bichu.B, delivery agent was terminated. However it is further contented that the complainant is not eligible for any compensation or relief sought for on the following grounds:-

- a. Both the posts of delivery agents of Neeleswaram Post Office were vacant and the daily delivery work of the postman was manned by engaging outsiders purely on stop gap basis. The article could not be delivered to the

complainant despite earnest efforts by the outsider delivery staff working in Beat No.II. The non delivery and return of the article was not willful, but due to the fact that the outsider delivery agent could not identify/locate the addressee. However when the non delivery came to the notice of the 3rd opposite party, immediate steps were taken to disengage the outsider at fault.

- b. Immediately on receipt of the complaint, the opposite parties at the delivery point conducted an enquiry and instructions were issued not to engage the delivery agent Sri.Bichu further for the delivery work.
- c. The complainant has stated that had she attended the interview, she would have got the job. But the averments is not supported by any evidence.
- d. The complainant has claimed compensation to the tune of Rs.2,00,000/- without any basis.
- e. There is statutory exemption for the opposite parties under Section 6 of Indian Post Office Act 1898. If there is no allegation of any fraud, willful act or default against any of the officers of the Post Office, no compensation can be awarded under Consumer Protection Act 1986. The Consumer Forum/Commission cannot go beyond the statutory provisions and grant compensation more than what is statutorily fixed. Since the complainant has not substantiated her claim that the opposite parties are involved in any sort of fraudulent or willful act in this case or was guilty of fraud or willful act or willful default, the claim for compensation is not maintainable.
- f. If there is no allegation of any fraud, willful Act or default against any of the officers of the Post office, no compensation can be awarded under Consumer Protection Act 1986.
- g. A Consumer forum is bound by the terms of the contract howsoever oppressive unless those terms are against public policy, illegal or void.

It is further contented that they are not involved in any sort of fraudulent or willful act in this case or was guilty of fraud or willful act or willful default and the claim of the complainant for compensation and cost suffered by the complainant are not sustainable. The opposite parties would further pray to dismiss the

complaint with their costs. The opposite parties have filed additional version also by raising the very same contentions by re-iterating the very same contentions and adding the following additional contentions. The complainant was residing at Pathanapuram since last 13 years and not given any instruction to the post office for redirection of postal article to the new address at Pathanapuram. The mother and brother of the complainant only are residing at the said address. The unserved postal article was delivered to the sender who is Velinalloor Service Co-operative Bank Ltd. No.2873, Karingannoor on the same day itself. The opposite parties have also produced the cover of the registered article and delivery slip dated 12.05.2018 along with the additional version. It is further contented that the recruitment process was purely temporary basis for 6 months. The employment exchange sponsored 20 candidates for 2 vacancies and the entire selection process completed during August 2018. On completion of 6 months those candidates were terminated and vacancies were filled on regular basis through the bank recruitment process and no vacancy were available in the bank. The complainant's claim for fixing liability against the opposite parties who are not involved in any sort of fraudulent, willful act is not maintainable.

In view of the above pleadings the points that arise for consideration are:-

1. Whether there is any deficiency in service or any unfair trade practice on the part of the opposite parties No.1 to 3?
2. Whether the opposite parties are involved in any sort of fraudulent or willful act or whether they are guilty of fraud, willful act or willful default in not delivering the registered post to the complainant/addressee?
3. Whether the complainant is entitled to get compensation, if so what would be the amount of compensation to be awarded?
4. Reliefs and costs.

Evidence on the side of the complainant consists of the oral evidence of PW1 and Exhibits P1 to P3, P4 series documents.

The opposite parties have not adduced any oral evidence. However the documents produced along with additional written version are marked as Exhibit D1. Both parties filed argument notes and heard both sides.

Point No.1to 3

For avoiding repetition of discussion of materials, these 3 points are considered together. The following are the undisputed rather admitted facts in this case. The complainant is a BSc Computer science graduate and also passed HDC&BM examination and thereafter she has registered her name in the employment exchange, Kottarakkara seeking employment. The employment exchange authorities sent an interview letter in the name and address for the complainant to attend an interview before the Board of Directors of the Velinalloor Service Co-operative Bank. However the letter was not served to the complainant and therefore she could not attend the interview and the interview board has reported that the complainant has not attended the interview to the employment exchange. That she has filed Ext.P1 complaint before the postal authorities. She has been married and her husband's residence is at Pathanapuram. However till 2020 she was residing at her family house at Neeleswaram. That the complainant got information from post office that the postal article has been returned by stating that she is not residing in the address. She has been invited to attend the interview for the job of clerk at the Co-operative bank on temporary basis for 6 months. The post man as on that charge as on the date of alleged non serving of letter was a relative but the families of both the complainant and 1st opposite party(Postman) are in enemical terms and civil disputes are pending between these 2 families. That on the basis of Ext.P1 complaint, enquiry was conducted and that the service of opposite party 1 (postman) was terminated. That the 1st opposite party has not served the interview call letter deliberately to the complainant due to civil dispute pending between the father of the opposite party and the complainant's family. Ext.P1 complaint filed before the 3rd opposite party by the complainant would corroborate the case of the complainant. It is also stated in Ext.P1 grievance petition, as she has lost her employment, she has sustained a heavy financial loss as

well as mental agony and that the dereliction of duty on the part of the postal authorities has affected her future itself.

In the light of letter dated 13.06.2023 send by Superintendent of Post Office, Pathanamthitta Division, the opposite parties content that as per the direction of Superintendent of Post Office, Pathanamthitta Division, the Inspector of Post Office, Adoor Sub Division had made a detailed enquiry and found out that the complainant Smt.Nisha, W/o Sri.Arun Chandran is a permanent resident of Arun Nivas Ward No.3, Karamoodu, Pathanapuram P.O, 68965 for the last 15 years and one Sri.Adarsh, Postman, Beat No.1 of Pathanapuram P.O, had been delivering postal articles to the complainant in the above mentioned address for the last 10 years. On enquiring with the neighbors of the said Arun Nivas, the inspector could realize that the complainant had been residing in the above address for the last 15 years. In this connection it is pertinent to note that though sufficient opportunities were there, the opposite parties have failed to convince their contentions. That the opposite parties did not take any initiative to corroborate their contentions. Moreover the above enquiry was carried out by the department itself but not by any independent investigating agency.

In this connection Ext.P3 letter (dated 01.08.2018) is to be considered, which evidence that the Senior Superintendent of Post Office, Kollam had made a detailed enquiry on the complaint made by the complainant on 21.06.2018 and admitted that the department had taken appropriate action against the concerned officials for the alleged non delivery of registered article. Through that letter they had expressed their regret on the inconvenience caused to the complainant by the concerned official(OP1). The above mentioned actions taken against the 1st opposite party would indicate that the opposite parties have already admitted dereliction of duty on the part of 1st opposite party.

It is true that the two enquiry reports submitted by the opposite parties on 1st August 2018 and 13th June 2023, appear contradictory, suggesting an attempt to evade responsibility in the latest report for the earlier admission.

The letter dated September 16, 2019 sent by P. Biju, Inspector Post, Kollam, North Sub Division, Kundara produced by opposite parties, admits that the complainant's mother and brother reside at the same address as that of the complainant. However, there is no mention in the letter that 1st opposite party had informed the residents of the same address about the registered letter addressed to the complainant. Moreover in the absence of any change of address-notification made by the complainant, the concerned postman was obligated to promptly inform the members of the same address about the registered letter. However 1st opposite party failed to carry out this necessary notification, which further substantiate the complainant's case that there was a clear dereliction of duty on the part of 1st opposite party. The Exhibit P4(a) Ration card and Exhibit P4(b) Aadhar card produced also establish that the complainant is a permanent resident of her house, Nijesh Nivas, Neeleswaram, Neduvathoor.

Section 6 of the Indian Post office Act 1898 reads as follows:-

Exemption from liability for loss, misdelivery, delay or damage.- The Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as herein after provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his willful act or default.

But from the above discussions it is very clear that in this case there exists deficiency in service on the part of opposite parties. That Section 6 does not provide an unfettered License to the officials of the Postal Department to cause irreparable loss and injury to its consumers.

It is further to be pointed out that by virtue of Section 100 of the Consumer Protection Act 2019 even if the consumer is having any remedy under any other statute including any special Act, the consumer can exercise the provisions of the Consumer Protection Act since the same is in addition to and not in derogation of

any other law for the time being in force. Hence this complaint is maintainable before this Commission.

It is also to be considered that here the opposite parties are attempting to downplay the undelivered letter by arguing that the recruitment process was purely temporary, lasting for six months and that the Employment Exchange sponsored 20 candidates for two vacancies etc. As far as an unemployed complainant in the seniority list is concerned, the above mentioned contention of the opposite parties are not tenable. Whether the post is temporary or permanent is immaterial, but joining a Public Sector Undertaking is an important matter to the complainant like any other unemployed person. In this context, the non-delivery of the interview letter to the complainant is purely dereliction of duty which amounts to deficiency in service.

It is further to be noted that during the complaint period the daily delivery work was manned by engaging outsiders purely on stop gap basis. The alleged registered article was entrusted to Beat No.11 Bichu on 10.05.2018 for delivering, but he returned the article with remarks "Not Known" while the complainant was residing in her permanent house Nijesh Nivas, Neeleswaram. As a relative as well as a neighbor, the 1st opposite party Bichu was well aware that the complainant was residing in the above house Nijesh Nivas but due to his enmity with the complainant, 1st opposite party deliberately returned the alleged registered article with remarks "Not known", which indicate that there exists fraud as well as willful default on the part of 1st opposite party. By entrusting irresponsible individuals such as opposite party No.1 &2 with delivering letters to the public, 3rd opposite party became vicariously liable for the deficient acts of his subordinates. Due to the above mentioned deliberate dereliction of the opposite parties, the complainant was put to an irreparable loss and injury, that insufficiency of service amounts to deficiency of service and unfair trade practice on the part of opposite parties No.1 to 3.

On evaluating the entire materials discussed above we are of the view that there exists deficiency in service as well as unfair trade practice on the part of

opposite parties. Hence the complainant is entitled to get compensation as well as costs. In the circumstances the complaint is only to be allowed. Points answered accordingly.

Point No.4

In the result the complaint stands allowed. The opposite parties are directed to pay compensation for Rs.2,00,000/- as against mental agony, sufferings, financial loss, dereliction of duty and deficiency in service as well as unfair trade practice on the part of opposite parties and Rs.10,000/- towards costs to the complainant. The opposite parties 1 to 3 shall comply with the above directions within 45 days from the date of receipt of a copy of the order failing which the complainant is at liberty to recover the amount with interest at the rate of 12% per annum except for costs from the opposite parties jointly and severally and from their assets.

Dictated to the Confidential Assistant Smt. Deepa.S transcribed and typed by her corrected by me and pronounced in the Open Commission on this the 6th day of October , 2023.

**S.SANDHYA RANI :Sd/-
(Member)**

**S.K.SREELA :Sd/-
(President)**

**STANLY HAROLD :Sd/-
(Member)**

Forwarded/by Order

Senior Superintendent

INDEX

Witnesses Examined for the Complainant:-

PW1 : Nisha

Documents marked for the complainant

Ext P1 : True copy of complaint filed by the complainant before Senior Superintendent of Post Office, Kollam Division.

Ext P2 : True copy of complaint acknowledgment.

Ext.P3 : True copy of letter dated 01.08.2018.

Ext.P4(a): Aadhar Card.

Ext.P4(b): Ration card.

Witnesses Examined for the opposite party:-Nil

Documents marked for the opposite party:-

Ext.D1 : True copy of the relevant pages of Electoral Roll published on 15.01.2018.

**S.K.SREELA :Sd/-
(President)
Forwarded/by Order**

Senior Superintendent