

UNIT TRUST OF INDIA

v.

RAVINDER KUMAR SHUKLA, ETC. ETC.

SEPTEMBER 19, 2005

[S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.]

*Consumer Protection Act, 1986:*

*Cheques—Sent by post—Non receipt of—Complaint before Consumer Forum alleging deficiency in service on the part of the payer—Courts held the payer liable to pay and negligence on its part—On appeal, held: Drawer is liable to pay—Loss has to be borne by it, the post office being its agent in absence of any contract or request from the drawee to send the amount by post.*

**Respondents-unit holders of the units of the appellant-company had filed complaints before District Forums alleging that they had not received the cheques issued by the appellant and sent through post. The Consumer Forums held that appellants were bound to pay the amount to unit holders; that there was negligence on the part of the appellant; and that post offices being agents of the appellants, the loss was to be borne by the appellant. Most of the Appeals/Revisions were dismissed by National Consumer Commission. Hence the present appeals.**

**Dismissing the appeals, the Court**

**HELD: 1. In the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is no contract of request either express or implied, the post office would continue to act as the agent of the drawer. In that case the loss is of the drawer. In the present case there was no proof of any contract that any request had been made by any of the payees that the amount be sent by post.**

[285-D-F]

*The Commissioner of Income-Tax, Bombay South v. Messrs. Ogale Glass Works Ltd., Ogale Wadi, [1955] 1 SCR 185 and H.P. Gupta v. Hiralal, [1970]*

A 1 SCC 437, relied on.

2. It cannot be said that there was no deficiency of service as there was no negligence on the part of the appellant. All the Forums have on facts held that there was an obligation to send the amounts and that there was negligence. These are questions on fact. There is no reason to interfere on questions of fact. [285-G-H; 286-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1619 of 2005.

C From the Judgment and Order dated 13.5.2002 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 1182 of 2001.

WITH

D (Civil Appeal Nos. 4247/2004, 1659/2005, 1657/2005, 4282/2004, 4248/2004, 1660/2005, 1652/2005, 4284/2004, 4283/2004, 4279/2004, 1651/2005, 4275/2004, 1661/2005, 1663/2005, 1665/2005, 4278/2004, 4280/2004, 4281/2004, 1662/2005, 1664/2005, 4276/2004, 4277/2004, 1654/2005, 1658/2005, 1655/2005, 1656/2005, 1653/2005, 1620/2005, 1621/2005, 4285/2004, 4286/2004, 4287/2004, 4288/2004, 1623/2005, 4289/2004, 4290/2004, 1624/2005, 1622/2005, 4291/2004, E 4292/2004, 4293/2004, 1626/2005, 1627/2005, 4294/2004, 1625/2005, 1628/2005, 4295/2004, 4296/2004, 4297/2004, 4298/2004, 4299/2004, 4300/2004, 4304/2004, 4305/2004, 1629/2005, 1630/2005, 1631/2005, 1632/2005, 1633/2005, 1634/2005, 4308/2004, 4309/2004, 1636/2005, 1635/2005, 4310/2004, 1637/2005, 1638/2005, 4311/2004, 1639/2005, 1640/2005, 4249-4250/2004, 4251- F 4252/2004, 4265-4266/2004, 4255-4256/2004, 4261-4262/2004, 4257-4258/2004, 4267-4268/2004, 1649-1650/2005, 4263-4264/2004, 1643-1644/2005, 4253-4254/2004, 1647-1648/2005, 4259-4260/2004, 1645-1646/2005, 1641-1642/2005, 4269-4270/2004, 4271-4272/2004 and 4273-4274/2004)

G K.N. Bhat, M.L. Verma and Mrs. Tehmina Punvani, Shrish Kumar Misra, Parveen Mehndiratta, Ravi Kant, S. Wasim A. Qadri, Ms. Suvira Lal, Ms. Varuna Bhandari Gugnani, Ms. Pareena Swarup, V.K. Verma, Shreekant N. Terdal, Shakil Ahmed Syed, C. Mukund, Ashok Jain, Pankaj Jain, Bijoy H. Kumar Jain, Ajit Bhama, Ms. Sunita Sharma, S. Uday Kumar Sagar, Ms.

Bina Madhavan, Mrs. Pooja Gupta, Ms. Susan Zachariah, A. Venayagam, Hemal Seth, Sandeep Singh, Jitendra Mohan Sharma, Ms. Amrita Bhinder, Rajan Narain, K.R. Nambiar, K. Surendran, Ms. Reena Singh, Ms. Bhakti Pasrija, Sudhir Kulshreshtha, Arun K. Sinha, Rakesh Singh, Ajay Siwach, M.T. George, Devandra Singh, Merusagar Samantaray, Ghanshyam, Pranab Kumar Mullick, D.S. Mahra, Subramonium Prasad, Gopala Krishnan R., Anil Kumar Sangal, Nalin Sangal, Deba P. Mohanty, Ms. Hena Rizvi, Ms. Syed Hena Rizvi, Nand Lal, Ms. Deepali Puri, R.D. Upadhyay, Jawahar Chawla, R.V. Sinha, Amit Chawla, Balraj Dewan, Vinay Kumar Garg, M.P. Shorawala, Pradeep Dewan, Ms. Praveena Gautam, Pramod B. Agarwala, S.B. Upadhyay, Alok Gupta, Umesh Chandra Rastogi, Bharat Sangal, Ms. Sangeeta Panicker, R.R. Kumar, Samyadip Chatterji, Pavan Kumar, Satya Mitra, Manish Kumar Shahi, S.V. Deshpande, Kamendra Mishra, P.I. Jose, K.S. Bhati, Anupam Mishra, Sanjay R. Hegde, S.C. Paul, Ms. Roopa Paul, Mohinder Singh, Gurmeet Singh, Manoj Kulshrestha, Ms. Rekha Pandey, Dinesh Verma, Ms. Suresh Kumari, A.P. Mohanty, Niraj Sharma, Dr. S.K. Verma, S.P. Sinha, Atul Kumar, Yatish Mohan, Vishwajit Singh, K.K. Rai, P. Parmeswaran, Sheetal Prasad Juneja, Ms. Rachna Gupta, Ms. Inkle Barooah, Ms. Bina Gupta and Ms. Rakhi Ray with them for the appearing parties.

The Order of the Court was delivered by

S.N. VARIAVA, J. All these Appeals can be disposed of by this common Order as the issue involved is the same.

Briefly stated the facts are as follows.

The Appellant is a statutory corporation established under Section 3 of the UTI Act, 1963. As part of its activities the Appellants float various schemes. Under the various schemes from time to time, the Appellant issue cheques towards maturity amount of the units purchased and/or towards repurchase value. It appears that the Appellant normally draw Account Payee, Non-transferable and Not Negotiable cheques and send them to the payee by registered post.

The Appellant started receiving a large number of complaints from unit holders alleging non-receipt of the cheques. In all 1600 unit holders had not received cheques of the value of app. Rs. 3 Crores 35 lakhs. All these cheques

A were intercepted, new accounts opened in Banks/Post Offices in the names of payees of the cheques and thereafter the monies were withdrawn leaving a minimum balance in the accounts. In respect of this colossal fraud, F.I.Rs. have been lodged, investigations and prosecution are in progress.

B As the unit holders had not received the money, they filed complaints in various District Forums. The District Forums have held that the Appellants are bound to pay the amounts to the unit holders. Most of the Appeals and/or Revision Petitions have been dismissed. Against the dismissal of the Appeals/Revisions by the National Consumer Disputes Redressal Commissions, these Appeals have been filed.

C The Consumer Forums have held that there was negligence on the part of the Appellant. It has been held that the post offices were agents of the Appellant and, therefore, the loss, if any, has to be borne by the Appellant. It has been held that as the Appellant had not paid the unit holders, the unit holders are entitled to receive the money from the Appellant.

D The question before this Court is whether the loss is to be borne by the unit holder payee and/or by the Appellant. The answer to this question would depend on whether the post office was acting as an agent of the unit holder and/or the Appellant.

E In the case of *The Commissioner of Income-Tax, Bombay South, Bombay v. Messrs. Ogale Glass Works Ltd., Ogale Wadi*, reported in [1955] 1 SCR 185, the question was whether the Respondent therein, which was a non-resident company, could be said to have received payment in India for the purposes of Indian Income Tax Act. On the request of the assessee, the amounts of the bills were sent to them by means of cheques which were drawn in Delhi. It was held that as the assessee had requested that the amounts be sent by post, the post office became the agent of the assessee. It was held that as the post office was in Delhi the assessee had received the amounts in Delhi.

F In the case of *H.P. Gupta v. Hiralal*, reported in [1970] 1 SCC 437, the Appellant was a Director of a company. The Respondent had filed a complaint under Section 207 of the Companies Act on the ground that the dividends

H

declared by the company had not been paid within the prescribed time. This complaint was filed at Meerut where the complainant resided. The question was whether the Magistrate at Meerut had jurisdiction to try the complaint. This Court held that Section 207 of the Companies Act casts an obligation on the company to pay the dividend, which is declared, to the shareholders within 42 days from its declaration. It was held that the offence under Section 207 is the failure to pay dividend. It was held that the failure to pay will arise when the warrant is not posted. It was held that the offence was failure to post and not the non-receipt of the warrant by the shareholders. It was held that the obligation to pay, therefore, arises at the place where it is to be performed, i.e., at the post office where the cheque is to be posted and not at the address at which the cheque is to be delivered. It was, therefore, held that the Magistrate at Meerut did not have jurisdiction as the post office was in Delhi. It was held that it is only the Magistrate at Delhi who would have jurisdiction. It must be mentioned that in coming to this decision this Court implied an agreement/request from the dividend holder to send the dividends by post.

Thus the law is that in the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is no contract or request, either express or implied, the post office would continue to act as the agent of the drawer. In that case the loss is of the drawer.

We, therefore, asked Mr. Bhat whether in any of the matters there was any proof of any contract that the amounts could be sent by post or any proof that any request had been made by any of the payees that the amount be sent by post. Mr. Bhat was also asked whether there was any proof of any practice from which it can be implied that the payee had requested/consented to have the cheques sent by post. Time was taken from this Court on two occasions in order to ascertain whether in any of the matters any such proof had been filed. After making inquiries and taking inspections of the papers from the lower Forums, Mr. Bhat very fairly stated that there was no proof in any of these matters.

Mr. Bhat next argued that these are not the matters in which the Consumer Forum had jurisdiction to adjudicate. He submitted that there was no deficiency of service as there was no negligence on the part of the Appellant. All the Forums have on facts held that there was an obligation to send the

A amounts and that there was negligence. These are questions of facts. We see no reason to interfere on questions of facts.

Under the circumstances, the Appeals stand dismissed. There will be no order as to costs.

B K.K.T.

Appeals dismissed.