A

UNION OF INDIA

v.

MOHD. NIZAM

October 18, 1979

B

[A. C. GUPTA AND E. S. VENKATARAMIAH, JJ.]

Indian Post Office Act, 1898, *Section* 34, *Scope of—Value Payable Article accepted by the Union of India for onward transmission to a foreign country which in turn collects the amount from the addressee but fails to send back due to suspension of the money order service between the two countries—*

C *Whether the post office is an agent of the sender and the foreign country a sub-agent.*

The respondent filed a suit for the recovery of a sum of Rs. 1606-8-0 being the value of V.P. article paid by the addressee in Pakistan to that Government for transmission to India. Due to the suspension of the money order service between Pakistan and India after 19-9-49, the amount was not sent by Pakistan

D P&T authorities to P&T authorities in India. Therefore, the appellant, pleaded non-liability by virtue of proviso to Section 34 of the Indian Post Office Act, 1898. The Trial Court dismissed the suit on the ground that the respondent's claim was barred by limitation under Rule 102 of the Rules framed under the Act and was also not maintainable in view of the proviso to S. 34. The first appellate court reversed the said decision on the view that Rule 102 was *ultra vires* the Indian Post Office Act and that non-payment by the Pakistan Govern-

E ment was not a valid defence. The High Court on appeal by the appellant affirmed the appellate decision holding that the post office established by the Government of India was an agent of the plaintiff and the Government of Pakistan was acting as the sub-agent.

Allowing the appeal, the Court

F HELD : When two sovereign powers enter into an agreement, as in the instant case "in order to establish an exchange of value payable articles", neither of them can be described as an agent of the other. It is plain that under such an agreement if the Pakistan Administration decided to suspend the V.P. service temporarily and did not make over the money realised from the addressee, it cannot be said that the Union of India had received the money but failed to pay. [975 C-D]

G Had the Pakistan Government been really a sub-agent, payment to them would have been as good as payment to the Union of India, but that is not the case here. Sub-agent is defined in Section 191 of the Contract Act, 1872, as "a person employed by and acting under the control of, the original agent in the business of the agency". Under the arrangement entered into between the two sovereign powers, Union of India and Pakistan, neither could be said to

H be employed by or acting under the control of the other. In view of the fact that since 19-9-1949 the money order service with Pakistan remained suspended, the proviso to section 34 of the Indian Post Office Act, 1872 is attracted which absolves the Central Government from "any liability in respect of the sum

specified for recovery unless and until that sum has been received from the addressee". [975 E-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 446 of 1969.

Appeal by Special Leave from the Judgment and Order dated 1-4-66 of the Allahabad High Court in S.A. No. 1133/65. B

R. P. Bhatt and *Girish Chandra* for the Appellant.

Pramod Swarup and *R. Sathish* for the Respondent.

The Judgment of the Court was delivered by

GUPTA, J. The stakes are not high in this appeal—it is valued at Rs. 1606-8-0—but it raises two rather interesting questions. Does the post office when it accepts a postal article for transmission act as an agent of the sender of the article ? And where the postal article is sent from India to an addressee in a foreign country, does the government of that country act as a sub-agent for transmission of the article ? C D

The questions arise on the following facts. The respondent had instituted a suit in the court of Munsif, Moradabad, for recovery of a sum of Rs. 1606-8-0 from the Union of India (Post and Telegraph Department) alleging that during the period from August 31, 1949 to September 17, 1949 the plaintiff despatched from the Moradabad City Post Office thirty value-payable parcels to addresses in Lahore and Rawalpindi in Pakistan, that they received the articles and paid the entire amount payable, but the defendant Union of India failed to pay the sum to the plaintiff. The Union of India in their written statement admitted that the aforesaid articles were despatched by the plaintiff as claimed and that their value was recovered in Pakistan but the Union of India did not receive the sum from the Pakistan Government as the money order service between India and Pakistan remained suspended from September 19, 1949 and this was the reason why the sum could not be paid to the plaintiff. Reference was made to section 34 of the Indian Post Office Act, 1898 and it was claimed that the said provision absolved the Union of India from liability. Section 34 reads as follows : E F G

> "The Central Government may, by notification in the Official Gazette, direct that, subject to the other provisions of this Act and to the payment of fees at such rates as may be fixed by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the H

A addressee, and that the sum, so recovered, shall be paid to to the sender;

Provided that the Central Government shall not incur any liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee.

B *Explanation* :—Postal articles sent in accordance with the provisions of this section may be described as "value-payable" postal articles."

It was further contended in the written statement that the plaintiff's claim, made for the first time on October 22, 1950 which was beyond C one year from the date of the booking of the value-payable articles, was not admissible under rule 102 of the Rules framed under the Indian Post Office Act which fixed a time-limit of one year "from the date of the posting of the articles" for making such claims.

It also appears from the written statement that the postal author- D ities had assured the plaintiff that his claim would be settled on receipt of the money from Pakistan after the money order service between the two countries was resumed.

Shri Om Prakash Sharma, Complaint Inspector, deposing for the defendant Union of India on April 15, 1953 stated that "since E 19-9-1949 the money order system with Pakistan was stopped on account of devaluation and it still stands stopped, the V.P. sent by the plaintiff was realised in Pakistan after 19-9-1949".

The trial court dismissed the suit on the ground that the plaintiff's claim was barred under rule 102 and was also not maintainable in view of the proviso to section 34 of the Indian Post Office Act. The F first appellate court reversed this decision and decreed the suit on the finding that rule 102 in so far as it fixed a limit of one year for making the claim was *ultra vires* the Act; it was also held that the fact that Union of India had not been able to realise the sum from the Pakistan Government was a matter which concerned the two governments and G not the plaintiff whose claim could not be defeated because of non-payment by the Pakistan Government.

The High Court on appeal by the Union of India affirmed the decision of the lower appellate court decreeing the suit. Rejecting the contention that section 34 of the Indian Post Office Act barred the H suit, the High Court held :

"Section 34 of the Act merely bars a suit in a case where the amount has not been received from the addressee. In

> the present case, it is admitted in the written statement as well as by the defendant's witness that the addressees had paid the amount to the Pakistan Government. That Government was the agent of the Union of India .... If the agent acting on behalf of the Union of India fails to do his duty, the plaintiff cannot be made to suffer. The matter is between the Union of India and its agent and the Union of India is responsible for paying the money to the plaintiff."

As regards rule 102 the High Court agreed with the view expressed by the lower appellate court that the rule was *ultra vires* the Indian Post Office Act.

The High Court proceeded on the footing that the post office established by the Government of India was an agent of the plaintiff for transmission of the postal articles to addressees in Pakistan and the Government of Pakistan was really acting for the Government of India as a sub-agent, and that even if the sub-agent failed to pay, the liability of Union of India as agent of the plaintiff did not cease. Agency is founded upon contract, express or implied. The assumption here is that entrusting a postal article to the post office for transmission gives rise to a contractual relationship between the sender of the article and the post office. What is the warrant for such an assumption? Before us Counsel for Union of India contended that the Post Office discharged a governmental function and acceptance of postal articles for transmission did not give rise to any contractual relationship.

The post office was established in India by a statute. Postage required to avail of the postal services has been defined in section 2(f) of the Indian Post Office Act as "the duty chargeable for the transmission by post of postal articles". Under section 4 the exclusive privilege of conveying letters is reserved to the Central Government with certain exceptions which are not significant. Section 17 of the Act says that "postage stamps" shall be deemed to be issued by Government for the purpose of revenue. It appears from section 23(3) of the Act that under certain circumstances postal articles sent by post may be opened and destroyed under the authority of the Post Master General. These are only some of the provisions of the Act which seem to indicate that the post office is not a common carrier, it is not an agent of the sender of the postal article for reaching it to the addressee. It is really a branch of the public service providing postal services subject to the provisions of the Indian Post Office Act and the rules made thereunder. The law relating to the post office in England is not

A very much different from that in this country. In *Triefus & Co. Ltd.* v. *Post Office*(1) the court of appeal held that the post office is a branch of revenue and the Post Master General does not enter into any contract with a person who entrusts to the post office a postal packet for transmission overseas. This decision approves the observations of Lord Mansfield in *Whitfield* v. *Lord Le Despencer*(2). In the B course of his judgment, Lord Mansfield said: "The Post Master has no hire, enters into no contract, carries on no merchandise or commerce. But the post office is a branch of revenue, and a branch of police, created by Act of Parliament. As a branch of revenue, there are great receipts; but there is likewise a great surplus of benefit and C advantage to the public, arising from the fund. As a branch of police it puts the whole correspondence of the Kingdom (for the exceptions are very trifling) under government, and entrusts the management and direction of it to the crown, and officers appointed by the crown. There is no analogy therefore between the case of the Post Master and a common carrier."

D

Counsel for the respondent referred to the decision of this Court in *Commissioner of Income-Tax, Delhi* v. *Messrs P.M. Rathod & Co.*(3) where it was held that the post office was an agent of the seller for the recovery of price against delivery of goods. Kapur, J. speaking for the Court said : "In the case of delivery of E goods by V.P.P., it is immaterial whether the buyer directs the goods to be sent by V.P.P. or the seller does so on his own accord because the goods handed over to the Post Office by the seller can only be delivered to the buyer against payment and this payment is received for and on behalf of the seller. The buyer does not pay till the goods are received by him and once he has paid the price it is the Post F Office that is responsible for payment of the money received by it to the seller. The buyer has no longer any responsibility in regard to it. Therefore a payment to the Post Office is payment to the seller and at the place where the goods are delivered and payment is made... This shows that whatever be the jural relationship between the seller and the Post Office in respect of carriage of goods sent by the seller G under the V.P.P. system it becomes an agent of the seller for the recovery of the price and if it fails to recover the price and delivers the goods it is liable for any damage to the seller." Reliance was also placed on *Union of India* v. *Amar Singh.*(4) In this case the

(1) [1957] 2 Q.B. 352.
H (2) [1778] 2 Cowp. 754.
(3) [1960] 1 S.C.R. 401.
(4) [1960] 2 S.C.R. 75.

respondent booked certain goods in September, 1947 with the N. W. Railway at Quetta in Pakistan to New Delhi. The wagon containing the goods was received at the Indian border station of Khem Karan on November 1, 1947 from where the E.P. Railway took over. The wagon reached New Delhi on February 13, 1948. The respondent going to take delivery of the goods found a major portion of the goods not traceable. In a suit for compensation for non-delivery of goods against the Dominion of India, it was held on the facts of the case that the N.W. Railway had implied authority to appoint the E.P. Railway to act for the consignor during the journey of goods by the E.P. Railway and by force of section 194 of the Indian Contract Act, the E.P. Railway became an agent of the consignor. It was also held that even if an agency could not be implied from the facts, a contract of bailment could be inferred between the E.P. Railway and the respondent.

It is however not necessary to examine the circumstances and the sense in which the Post Office or the Railway, in the two aforesaid decisions was held to be an agent or a bailee, because the case before us can be disposed of on a short point. Admittedly the Government of Pakistan did not make over the money realised from the addressees in Pakistan to the Union of India. The provisions of the Indian Post Office Act did not apply beyond the territorial limits of India except to citizens of India outside India. Postal communication between different countries is established by postal treaties concluded among them. In the course of the hearing of this case, counsel for the appellant produced a copy of the Agreement for the exchange of value-payable articles between India and Pakistan which became operative from April 1, 1948 and was to "continue in force until it shall be modified or determined by mutual consent of the contracting parties, or until one year after the date on which one of the contracting parties shall have notified the other of its intention to terminate it". The Agreement starts as follows :

"In order to establish an exchange of value-payable articles between India and Pakistan, the undersigned, duly authorised for that purpose, have agreed upon the following Articles :" The copy of the Agreement shows that it was executed in duplicate and signed for the Director General of Posts and Telegraphs of the two countries at New Delhi and Karachi respectively. The relevant Articles of the Agreement are set out below :

Article 4

Value-payable articles shall be entered in the registered list, insured letter invoice, or parcel bill in the same way

as other registered articles, insured letters and insured or uninsured parcels, as the case may be, but with the addition, the column for remarks, of the word "Value-payable", followed by an entry..of the amount in Indian rupee currency to be remitted to the sender, and also of the sender's name and full address in clear characters.

Article 5

Every V.P. article shall be accompanied by a V.P. money order in conformity with or analogous to the specimen 'A' and "AA" annexed to the present Agreement. This money order shall bear a statement of the amount to be remitted to the sender and shall show, as a general rule, the sender of the Article as payee of the order.. .....

Article 6

The amount to be remitted to the sender together with the commission chargeable thereon (at the rate in force for ordinary money orders drawn on the country of origin of the value-payable article), shall be collected from the addressee. The amount to be remitted to the sender shall be transmitted to the latter by postal money order and the commission shall be retained by the Administration which issues the money order.

Article 9

If the addressee of a value-payable article other than a value-payable parcel, does not pay the amount of the charge within the limit of time prescribed by the internal regulations of the country of delivery, the article shall be sent back to the office of origin. Each country shall communicate to the other its internal regulations in this respect.

Article 10

In the event of the loss of a value-payable registered article or when a value-payable insured letter or a value-payable insured or uninsured parcel has been lost or damaged or its contents abstracted, the responsibility shall be fixed and compensation paid under the same conditions as in the case of other registered articles, insured letters or insured or uninsured parcels, as the case may be. When, however, such an article, letter or parcel has once been delivered, the Administration of the country of destination shall

be responsible for the sum collected and must, if necessary, prove that it has remitted it, less the prescribed commission, to the sender.

Article 12

Each Administration is authorised, in special circumstances that would justify such a measure, temporarily to suspend the V.P. service wholly or in part, on condition that notice of such suspension be given immediately to the other Administration, and if deemed necessary, the notices of suspension shall be communicated by telegraph.

When two sovereign powers enter into an agreement as above, neither of them can be described as an agent of the other. The plaintiff was expected to know that without such an arrangement between the two countries it was not possible for the Indian postal authorities to reach the postal articles to addressees in Pakistan. It is plain that under such an agreement if the Pakistan Administration decided to suspend the V.P. service temporarily and did not make over the money realised from the addressees, it cannot be said that the Union of India had received the money but failed to pay. Had the Pakistan Government been really a sub-agent, payment to them would have been as good as payment to the Union of India, but that is not the case here. Sub-agent is defined in section 191 of the Indian Contract Act, 1872 as "a person employed by, and acting under the control of, the original agent in the business of the agency". Under the arrangement entered into between the two sovereign powers, Union of India and Pakistan, neither could be said to be employed by or acting under the control of the other. We have already referred to the evidence of Complaint Inspector Om Parkash Sharma that since September 19, 1949 the money order service with Pakistan had remained suspended. That being so, the proviso to section 34 of the Indian Post Office Act is attracted which absolves the Central Government from "any liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee". The plaintiff's claim cannot therefore succeed. In the view we take, it is not necessary to consider whether rule 102 is *ultra vires* the Indian Post Office Act.

The appeal is allowed, the judgment and decree of the High Court are set aside and the suit is dismissed. In view of the order made

A on February 26, 1969 the appellant will pay the costs of the respondent. We expect the defendant to act up to the assurance given to the plaintiff as appearing in paragraph 3 of the written statement that the plaintiff's "claim will be settled" on receipt of the money from Pakistan after resumption of the money order service between the two countries.

B

V.D.K. *Appeal allowed.*