

PETITIONER:
NITIN RASHMIKANT KANTAWALA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 31/01/1997

BENCH:
S.C. AGRAWAL, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Special leave granted.

This appeal is directed against the judgment of the Bombay High Court dated September 16, 1994 whereby the Writ Petition No. 25 of 1992 filed by the appellant has been dismissed.

The said Writ petition relates to the enforcement of the "Delivery to Mail Order 1991" (hereinafter referred to as 'the 1991 Order') issued by the Director General of Posts and Telegraphs in exercise of the powers conferred by sub-section (3) of Section 21 of the Indian Post Office Act, 1898 (hereinafter referred to as 'the Act') vide notification dated May 29, 1991. The 1991 Order was issued to deal with the growing problem of delivery of mail in high-rise multi-storeyed buildings that have come up as a result of vertical expansion of the large towns in the country. It provided for delivery of unregistered mail by the Post Office in the mail box of the addressee to be put at the ground floor of the building in which the addressee is located. By the impugned judgment, the High Court has upheld the validity of the said order. While the matter was pending in this Court, the 1991 Order has been superseded by the "Delivery of Postal Articles Order, 1996" (hereinafter referred to as 'the 1996 Order') which has also been issued by the Director General of Posts and Telegraphs in exercise of the powers conferred by sub-section (3) of the Act vide notification dated November 24, 1995.

We have heard the appellant in person as well as Shri P.P. Malhotra, the learned senior counsel appearing for the Union of India, and Shri D.N. Mishra, the learned counsel for the Municipal Corporation of Greater Bombay.

The appellant has made a grievance mainly with reference to the conditions in the city of Bombay and especially in respect of the existing buildings. It has been urged that in most of the existing multi-storeyed buildings no space has been provided for keeping mail boxes for the residents and since the facilities of mail boxes cannot be provided in such buildings, the same should be excluded from the operation of the 1996 Order. As regard the buildings which would be coming up in the future, it has been

submitted that necessary provision should be made in the regulations governing grant of sanction of the plan as well as the completion and occupancy certificate to ensure that the suitable provision is made for installing mail boxes in such buildings.

The appellant has also raised a legal submission about the validity of the 1991 Order and has invited our attention to clause (c) of Section 3 of the Act wherein the expressions "in course of transmission by post" and "delivery" have been defined. The submission is that 1991 Order as well as 1996 Order are ultra vires the provisions of the Act because clause (c) of Section 3 of the Act only postulates delivery at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to the authorised to receive the article and does not postulate delivery in other manner and that delivery in a mail box which is not kept in the house or office of the addressee is not permissible under the said provision. We do not find any force in this submission. Under Section 3(c) it is permissible to make delivery of the postal article at the house or office of the addressee. The expression "house or office of the addressee" in Section 3(c) cannot be confined to the part of the building in which the addressee is residing or has his office. The said expression would include the building in which the residence or office of the addressee is situate. The delivery of a postal article in a mail box kept in the building in which the residence or office of the addressee is located has to be treated as delivery at the house or office of the addressee. The provision in the 1996 Order regarding delivery of the postal article in the mail box of the addressee cannot, therefore, be held to be impermissible under Section 3(c) of the Act.

The other question that remains to be considered is whether the provision for having a mail box for the residents in existing buildings in Bombay city which do not have space for keeping mail boxes can be regarded as fair and reasonable. In this regard, it may be mentioned that during the pendency of the Writ Petition in the High Court, a Committee of Members of Parliament was appointed by the Central Government to examine the Mail Box Delivery Scheme in Bombay city. The said Committee submitted its report in November 1992. In its report the Committee has pointed out that the old buildings in congested localities of Bombay mostly consist of ground and four upper floors and their passages are very narrow and that it would be difficult to compel the occupants to receive their mail through mail boxes provided on the ground floor. The Committee felt that it would create great hardship if the scheme is implemented in buildings consisting of ground and four upper floors only which were mostly constructed prior to the year 1940 and are tenanted premises and that in many cases such buildings will have to be exempted from the operation of the scheme. The Committee made the following recommendations:-

"CHAPTER 5 : RECOMMENDATIONS :-

5.1 Considering all the aspects of the Mail Box Scheme and the objections of the Citizens particularly on the ground of lack of space for putting up Mail Boxes and appreciating the merits of the Scheme, the Committee makes the following recommendations:-

5.2 The Postal authorities may undertake rigorous campaign to create awareness among the citizens

regarding the usefulness of the scheme. Government of Maharashtra may also be approached for making appropriate amendments in the Bombay rent Act to enable tenants to put up mail box in the common passages of buildings. Voluntary acceptance in such cases may be encouraged by the Postal Department.

5.3 The Mail Box Scheme should be introduced in the buildings which shall be hereinafter constructed and in the building which are still under construction. For this purpose, it is gratifying to note that the Development Control Regulations for Greater Bombay 1991 issued by the Urban Development departments, Government of Maharashtra, and published in the Maharashtra Gazette part I Kaukan Divisional Supplement dated 21.2.1991 contains a provision, 'a letter box of appropriate dimensions shall be provided on the ground floor of residence, Commercial buildings with 5 or more storeys, to the satisfaction of the commissioner'. The Postal Department, therefore, may prevail upon the Municipal Commissioner of Greater Bombay not to pass any building proposal unless the aforesaid condition of the letter box is complied with and not to give completion certificate to buildings under construction till the aforesaid condition is satisfied. Thus a good beginning can be made and in course of time may many new buildings in Bombay will have implemented this scheme.

5.4 The Scheme should apply also to the existing high rise buildings with 6 storeys (ground + 5 floors) and more. However in these cases also where in respect of any particular building genuine hardships are placed before the Postmaster General Bombay or his authorised nominee and the same are found to be true the said building may be exempted from the scheme. Most of such buildings are on ownership basis and therefore the problem of landlord objecting will not arise. Except the new building to be constructed as stated in para 5.3 and the high rise buildings as stated in para 5.4 all the existing buildings should be exempted from the scheme.

5.5 As already stated earlier in para 3.11 while there may be

instances of genuine hardships likely to arise from the implementation of the scheme there are some merits also in the scheme. The scheme cannot, therefore be rejected on its merits. It will have to be introduced cautiously without causing hardship to the people. Public awareness is to be created while introducing the scheme.

5.6 Adequate time, say 3 months, may be given to those who are required to comply with the scheme.

5.7 The Committee also strongly feels that the approach of the Ministry of Communications and the Government of India that Postal Department is a commercial department may be reviewed and revised. Like Health and Education, it should be considered as a Department rendering social service to the society and from that point of view the general ban on sanctioning the additional postal staff particularly the Postmen, and the strict cut on the expenses on opening of new post offices may be given up. This Department may be treated as a department rendering social service to the citizens at large, and keeping in view the essential requirements of the citizens for maintaining vital communications and requirements of the staff for catering to the needs of the public post offices be given top priority in the budgetary provisions of the Government."

Keeping in view the recommendations of the said Committee, by clause 2 of the 1996 Order multi-storeyed buildings having five storeys (ground plus four floors) are excluded from the ambit of the said order. Furthermore, the 1996 Order contains a provision in clause 4 regarding exemption of certain buildings from the ambit of the said order. Clause 4 reads as follows :-

"Clause 4, Power to exempt - Where there is genuine difficulty in complying with the provisions of this order in a particular building, the Chief Post Master General, Post Master General Senior Superintendent of Post Offices, or as the case may be, the Superintendent of Post Offices, may for reasons to be recorded in writing, exempt the said building from the provisions of this order."

The Department has proposed the following guidelines for exercising the power to relax delivery of postal articles under the 1996 Order for existing buildings as per clause 4 of the said order:-

"PROPOSED GUIDELINES FOR EXERCISING
THE POWERS TO RELAX DELIVERY OF
POSTAL ARTICLES ORDER 1995 FOR

EXISTING BUILDINGS AS PROVIDED FOR IN RULE OF THE ABOVE CITED ORDER.

1. The application could be made before the Supdt. of Post Officers/SSPOs/PHG/CPMG by 10.2.97 this date is tentatively fixed for Bombay and will be decided separately for each area.

2. The authorised official from the Post Office would be sent to the premises within 7 days of receipt of the application to report on whether post boxes could be fixed on the ground floor or find out a viz media of installation of a community box for delivery of postal articles to an authorised person which could be the caretaker of the building/society. He will submit his report within three days from the date of his visit.

3. The applicant will be given the extract of report and he may make his representation against or in favour within 3 days of the report and after considering the report of the authorised offices, representation, if any, of the applicant, the authority to which the application was addressed will decide the matter.

4. The application will be decided within one month of its receipt and the decision conveyed to the applicant.

5. During the period of deliberation of the application the postal articles will continue to be delivered at the doorstep of the addressee or at a common place agreed to by the Caretaker/management of the building/society."

The aforementioned guidelines contain adequate provisions for ensuring that the power to grant exemption under clause 4 of the 1996 Order is exercised reasonably.

We would, however, direct that the following changes be made in the guidelines :-

(i) In paragraph 1 of the guidelines the last date fixed for submission of applications shall be March 31, 1997, instead of February 19, 1997.

(ii) In paragraph 2 of the guidelines it should be prescribed that the officer before going to the building concerned for inspection shall give prior notice of the date and time of his visit to the building to the person who has submitted the application referred to in paragraph 1 of the guidelines.

This takes care of the existing buildings.

As regards buildings to be constructed in future, we find that the Urban Development Department of the Government of Maharashtra has made the Development Control Regulations for Greater Bombay, 1991 which have been published in Maharashtra Government Part-I dated February 21, 1991. The said regulations provide that "a letter box of an appropriate dimension shall be provided on the ground floor of residence, commercial buildings with five or more storeys to the satisfaction of the Commissioner". The Municipal Corporation of Greater Bombay must ensure that no plan for a building is approved unless it contains provision for space for mail boxes and no plan is being sanctioned which does not contain such provision, the Municipal Corporation of Greater Bombay will also ensure that no occupancy and completion certificate is granted in respect of any building if it does not satisfy the aforesaid requirement.

Since the 1996 Order is applicable throughout the country and high-rise multi-storeyed buildings are coming up in other towns, it is expected that the States as well as the Union Territories shall make suitable provisions on the same lines as have been made in Maharashtra and that the local authorities in the various towns will follow the above mentioned directions given with regard to sanctioning of plans for new buildings and granting of completion and occupancy certificates for such buildings.

The appeal is disposed of accordingly. No costs.