

(1996) 12 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

A. NAGESWAR RAO

APPELLANT

Vs

Orissa State Road Transport Corporation

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Citation : 1997 2 CPJ 324

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Final Decision : Appeal disposed of

Judgement

1. THE complainant in C.D. Case No. 4 of 1995 before the District Consumer Disputes Redressal Forum, Malkangiri is the appellant in this appeal. THE case of the complainant before the Forum was that on 27.3.95, he boarded the Orissa State Road Transport Corporation bus bound for Malkangiri and paid Rs. 21/- to the conductor being the bus fare from Jeypore to Malkangiri. THE conductor instead of issuing a ticket for Jeypore to Malkangiri, issued a ticket from Jeypore to Boipariguda. After verifying the ticket, the complainant demanded a ticket for Malkangiri. But though he asked for the same at different places between Boipariguda to Malkangiri, the conductor did not give any ticket. Ultimately, after getting down at Malkangiri when the complainant was going to police station to lodge a complaint the conductor hastily gave a ticket which later turned out to be not relevant for the journey performed by the complainant. Being cheated by the Conductor of the opposite parties, he knocked at the doors of the District Forum, Malkangiri.

2. THE opposite parties filed a counter and resisted the case saying that they had no knowledge about the alleged cheating by the conductor and they came to know about it only after the complaint was filed and as such there was no deficiency in service on their part. The District Forum after considering the case of both sides and perusing the documents filed dismissed the case and held that it is a vexatious case for the reason that the complainant has not sustained any loss by the issuance of the ticket for less than the distance to be covered by the complainant nor he has proved the aforesaid allegations by adducing evidence of

some of the co-passengers. It also proceeded on the basis that the complaint petition was not maintainable in the absence of the conductor or the driver of the bus being included as opposite parties. The District Forum is of the view that the complainant being an Advocate, he should have obtained the names and addresses of the co-passengers who could possibly be the witnesses in support of the allegations made by him. He considered the application to be frivolous and vexatious for the reason that the complainant without due care and caution filed the aforesaid case and did not prove any of the allegations made by him and ordered that the complainant do pay Rs. 3,000/- each to the two opposite parties being the cost for causing unnecessary expenditure and harassment to them. Hence this appeal.

Having gone through the impugned order and after hearing the learned Counsel for both sides at length, we are unable to agree with the ultimate views expressed by the District Forum. Admittedly the complainant had produced before the District Forum the xerox copies of the tickets which were issued to him during his journey. The first ticket was from Jeypore to Boipariguda and the distance covered as mentioned in the ticket is 22 kilometres. The fare collected under the said ticket is Rs. 4.22p. It has not been disputed that the said ticket was not issued to the complainant during his journey. It may be that proper enquiry was not possible on the part of the opposite parties, but that does not mean that the aforesaid allegation of the complainant was false. The second ticket which was issued at the terminus of his journey as alleged by the complainant, refers to a distance of 335 kilometres from Gamuda to Balimela which does not fall in the route from Jeypore to Malkangiri. It is not the case of the opposite parties that the complainant had paid the fare of Rs. 67.33p. for which the said ticket was issued. It, therefore, appears to us that at the first instance, the complainant was issued a ticket for a distance of 22 kilometers though his journey covers about a distance of about 108 kilometers for which Rs. 21/- was realised from him as fare. In the aforesaid circumstances, the dispute presented before the District Forum cannot be termed as false and vexatious.

3. THE other ground taken by the opposite parties before the District Forum was about the maintainability of the proceeding in the absence of the necessary parties. THE complainant in this case impleaded the Orissa State Road Transport Corporation and the District Transport Manager of the said Corporation as opposite parties but did not implead the conductor or the persons who were in the bus and were responsible for issuance of the tickets. This in our opinion is not a valid defence. It is immaterial whether the driver or the conductor was not impleaded for the reason that the ultimate responsibility of the organisation is on the person responsible and instead of owning their responsibility, they pleaded that the case is not maintainable in the absence of the conductor of the bus. A passenger is not expected to know the name of the conductor and there is no process of disclosure of the name of the conductor during the journey of a passenger. Whoever might be the conductor or the driver of the bus, the ultimate authorities of the organisation are vicariously controllers and are liable for any

lapse or deficiency committed by them. In this view of the matter, the proceeding against the persons responsible was maintainable. It has been observed by the District Forum that since Rs. 21/- which is the proper fare for the journey for the distance to be covered by the complainant was not in excess of the due fare, the complainant has not been cheated nor he has suffered any financial loss for which reason his case was incompetent as a consumer dispute. This in our opinion is also a misconception. A passenger travelling in a bus is entitled to certain services out of which issuance of a ticket on payment of proper fare is one. If a passenger is not given a ticket for the journey he undertakes after payment of the due fare cannot be said to have availed of the services he was entitled to. Besides the transport authorities by the aforesaid process can be said to have adopted unfair trade practice by not issuing a proper ticket or by issuing a ticket for a distance less than the distance for which the passenger has paid for. For the aforesaid reasons, we are unable to agree with the District Forum that it was a vexatious litigation warranting recourse to be taken under Section 26 of the Consumer Protection Act. On the other hand, from the facts which we accept as true, the proper course should have been to dispose of the case at least with a warning to the opposite parties to instruct their running staff not to repeat such incidents in future. In the result, we dispose of this appeal setting aside the judgment of the District Forum awarding costs against the complainant and we hope that the respondents would issue necessary instructions to their running staff not to repeat such incidents in future. Appeal disposed of.