

(2012) 04 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

Air India Formerly known as Indian Airlines Ltd

APPELLANT

Vs

Mary Ramasamy

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 108 : 2012 2 CPJ 421 : 2012 2 CPR 342

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Advocate : N.G.R.Prasad

Judgement

1. AGGRIEVED by the impugned common order dated 14.09.2011 passed by Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (for short ? the State Commission?) in First Appeal Nos. 638 of 2011, 316 of 2009 and 132 of 2009, Air India (O.P. No. 3 in the original complaint) has filed the present petition purportedly under Section 21(b) of the Consumer Protection Act, 1986 (for short ?The Act?). The appeals before the State Commission were filed by the opposite parties No. 1 to 3 against the order dated 13.01.2009 passed by District Consumer Disputes Redressal Forum, Mylapore, Chennai -4 in consumer complaint No. 723 of 2004. By the said order, the District Forum partly allowed the complaint filed by the complainants/Dr. Mary Ramasamy for herself and as mother and natural guardian of her two daughters, Ms. Niranjana Ramasamy and Ms. Krupa Ruth Ramasamy against the Managing Director-Travelon World Wide Pvt. Ltd. (O.P. No.1), Managing Director-Quantas (O.P. No.2) and Managing Director-Indian Airlines (O.P. No.3) alleging deficiency in service on their part, and directed the O.P. No. 1 to 3 jointly and severally to pay a sum of Rs. 25,000/- as compensation and Rs. 5,000/- as cost of the litigation to each of the three complainants with the stipulation that the awarded amount shall be paid within six weeks from the date of the receipt of the order, failing which the awarded amount shall carry interest @ 9% per annum till the date of payment.

2. AGGRIEVED by the said order, O.P. No. 1 to 3 filed appeals Nos. 638 of 2011, FA No. 316 of 2009 and FA No. 132 of 2009. The State Commission dismissed the appeal No. 638 of 2011 filed on behalf of O.P. No.1-Travelon World Wide Pvt.

Ltd.(the travel agent) and F.A. No. 132 of 2009 filed by O.P. No.3-Air India, while it accepted the F.A. No. 316 of 2009 filed by Quantas (O.P. No.2) and set aside the order of the District Forum against them. It had held the other O.Ps/ appellant guilty of deficiency in service and liable to pay the compensation jointly and severally with the other opposite parties/appellants. The facts and circumstances, which led to the filing of the complaint by the complainants have been noted in detail in the orders passed by the Fora below and need no repetition at our end. To answer the present proceedings, we may simply notice that the above named complainants had filed complaints against the travel agent, Quanta and Air India alleging deficiency in service on their part on the broad allegations that they had booked their air passage from Chennai to Melbourne via Singapore, by paying the requisite fare to the travel agent who issued them O.K. tickets. As per the itinerary, the complainants were to take flight No. IC 555 (Indian Airlines) from Chennai International Airport to Singapore leaving at 00.50 hours on 21.12.2002 and thereafter QF 16 from Singapore to Melbourne leaving the Singapore at 9.20 hours. When the complainants reached Chennai International Airport for taking the scheduled flight No. IC 555, to their utter shock and surprise they found that their names did not figure in the list of the passengers scheduled to travel on the said flight. Despite the complainants having confirmed / O.K. tickets, they were not allowed to board the said flight and their passage was rescheduled for the next day i.e. 22.12.2002 by the even number flight. Since the said flight was delayed and could not reach Singapore in time, they could not be put on the connecting flight to Melbourne. After waiting for about 12 hours at Singapore Airport, they were put on a different flight via Sydney. Complainants reached Melbourne after a delay of more than thirty six hours, which made their waiting relatives quite anxious but also caused lot of mental and physical torture and discomfort and extra expense to the complainants. The travel agent did not choose to contest the complaint despite service of notice but the other two opposite parties i.e. Quantas Airlines and Air India contested the complaint by filing separate written versions. Quantas denying any deficiency on their part tried to explain that it had confirmed seats available for the complainants on its Flight QF 16 leaving Singapore on 21.12.2002 but the complainants did not reach Singapore due to cancellation of their flight from Chennai to Singapore. However, on their arrival at Singapore Airport on 22.12.2002, the complainants were informed that only one seat was available on the direct flight to Melbourne and as the complainants were three in number, they were accommodated on a later flight for Melbourne via Sydney. It was contended that deficiency in service, if any was on the part of Air India.

Air India in their written version admitted the booking of the tickets of the complainants through the travel agent but denied any deficiency in service on its part or liability on the ground that the booking was made during a period which is termed as 'Peak Season' and therefore, the Air India sent messages on 17.12.2002 and 19.12.2002 to the travel agent to reconfirm the booking of the

complainants in order to avoid cancellation of tickets and since no reply was received from the travel agent, it cancelled the reservation on 20.12.2002 at 11.30 hours informing the travel agent about the same. The said cancellation is stated to have been done as per the International Conventions.

3. WE have heard Mr. N.G.R. Prasad, learned counsel representing the petitioner/Air carrier and have considered his submissions. Based on the defence plea (Supra) put forth on behalf of Air India, learned counsel reiterated the same and vehemently argued that the Air India has not committed any deficiency in service by cancelling the booking of the complainants of their flight IC 555 leaving at 00.50 hours on 21.12.2002. It was contended by the learned counsel that as per the prevalent practice, anticipating cancellations of booked tickets, the Airlines do over booking and therefore, seek reconfirmation from the passengers about their travel schedule and if such a reconfirmation is not received in advance, the tickets are cancelled / deemed cancelled. In this connection, it is pointed out that the Air India had sought such reconfirmation from the complainants, of course, through the travel agent on 17.12.2002 and 19.12.2002 and as it was not forthcoming, the booking was cancelled on 20.12.2002. It is stated that by doing so the Air India has committed no wrong and if there was any negligence / deficiency in service, it was on the part of the travel agent, who is liable to compensate for the inconvenience, mental harassment or pecuniary loss suffered by the complainant. In support of this contention, learned counsel for the petitioner/Air India has sought support from a decision of this Commission dated 10th December, 1992 in First Appeal No. 60 of 1991, in particular, a reference has been invited to the following observations made in the said Judgment: ? Though M/s. Vyas Travels Pvt. Ltd., was a ticketing agent authorized to sell Indian Airlines ticket and was in that capacity and to that limited extent an agent of the India Airlines, it was also functioning as an agent of the complainant engaged by him for booking his air ticket from Ahmedabad to Delhi. The authority conferred on the ticketing agent by Indian Airlines was only to sell and issue tickets in accordance with the flight operation schedules and timings notified by the Airlines. In making the wrong entry regarding the departure timing of the flight in question, the travel agent had manifestly acted contrary to the instructions of his principal namely, the Indian Airlines Corporation. The said wrongful act of the travel agent was beyond the scope of its limited authority and for any consequential loss to a third party arising therefrom, the liability will only be that of the travel agent and not of the principal. The complainant who had hired the service of the travel agent has a legitimate claim against the said agent for the deficiency in service consisting of wrong noting in the ticket. Though the second respondent has taken a plea that it had issued the ticket in a jacket on which it had been clearly mentioned that the passenger himself should check the correct timings, no specimen of the jacket was produced before us and there is nothing to show that as a matter of fact the ticket had been issued to the complainant in any such jacket. WE are, therefore, unable to uphold this plea. While exonerating the Indian Airlines from liability for payment of compensation,

we hold that the damages assessed by the State Commission at Rs. 1000/- shall be payable by M/s. Vyas Travels Pvt. Ltd.-travel agent-with interest at 18 per cent from the date of this order till the date of actual payment. 6. With utmost humility at our command, we are unable to subscribe to the above view taken by a Coordinate Bench of this Commission and particularly in regard to the sole responsibility of the travel agent in the case of cancellation of confirmed/O.K. ticket and exonerating the Airlines for doing such a cancellation. WE cannot be oblivious to the rights of the air passengers and duties and obligations cast on the airlines, who had issued the confirmed/O.K. tickets. Although no proof has been brought on record to show that the petitioner airlines had sent messages to the travel agent on 17.12.2002 and 19.12.2002 to seek reconfirmation of tickets from the complainants but believing that such messages were issued, in our view, it was not very material because we feel that it was obligatory on the part of the airlines itself to have sought reconfirmation of the booking, if it was at all necessary in case of confirmed/O.K. tickets. It has been brought on record that over booking to the extent of 200% was done on the flight No. IC 555 leaving Chennai at 00.50 hours on 21.12.2002. If such over booking is done by the Airlines, they render themselves vulnerable to such a situation as has taken place. However, in absence of any communication or verification from the complainants, the petitioner/Airlines could not cancel the reservation of O.K. tickets booked several days in advance. It was totally unfair and unjust on the part of the Airlines to do so. The cancellation of O.K. Tickets in such circumstances is the manifest act of deficiency in service on the part of the petitioner/Airlines. 7. In the case in hand, the complainants all of whom were women including minors had O.K. tickets in their possession and they could not imagine that on reaching the airport, they will be confronted with a situation that their tickets had been cancelled leaving them in a lurch because they did not belong to Chennai City and had come to Chennai from some interior part from Tamil Nadu and they had to travel further to Melbourne from Singapore by a connecting Qantas flight. Information about the cancellation of their tickets must have come as a life time rude shock to them. As a result of which they were on the streets of Chennai upto the next flight which was 24 hours later. It is not difficult to visualize the kind of mental harassment and torture complainants would have suffered during those hours. They were certainly entitled for a better treatment from a National carrier like the Petitioner. 8. From a conspectus of the entire circumstances, there is no escape from the conclusion that the petitioner/Airlines has not only committed grave deficiency in service by cancelling the O.K./confirmed tickets of the complainants but the said act would also amount to adoption of malpractice or what is called unfair trade practice. WE wish that the petitioner/Airlines would stop such a practice forthwith. 9. Viewed from any angle, we are of the considered opinion that the impugned order passed by the State Commission is eminently justified and suffers from no illegality, material irregularity much less any jurisdictional error, which warrants interference by this Commission. WE wish that in the peculiar facts and circumstances of the case, the petitioner/Air India Ltd., ought to have gracefully accepted and complied with

the concurrent finding and orders of the Fora below rather than approaching this Commission by these proceedings. The Revision Petition is accordingly dismissed.