

(2010) 08 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Cox and Kings (I) Pvt. Ltd

APPELLANT

Vs

S.P.Putchala S/o P Mallikarjuna Rao

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : 2010 0 NCDRC 147 : 2010 4 CPJ 65

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : A.N.Haskar , Swati Sinha

Judgement

1. THE present revision petition has been filed by M/s Cox and Kings (I) Pvt. Ltd., and Another (hereinafter referred to as Petitioners) against the order of the State Commission which had upheld the order of the District Forum granting relief to the Respondents in this case Col S P Putchala and Another (hereinafter referred to as Respondent). THE Respondents in this case had filed a complaint in the District Forum against the Petitioners on the grounds of deficiency in service. THE relevant facts according to them are as follows: THE Respondents had used the services of the Petitioners who are the travel agents under their Scheme Duniya Dekho Tour in 2001 and opted for 22 days and 21 nights tour to Europe with an add-on three days visit to Dubai. THE total cost for one person was Rs.61,025/- plus US\$ 249 and 125\$ each for the add-on Dubai Tour. THE detailed itinerary of the places to be visited etc., was made available by the Petitioner. In addition, as per the Scheme, Respondents would be entitled to take the benefit of free holidays each year to various destinations for the next five years i.e., between 2002 to 2006. During the tour, the Respondents found that there were several changes and deviations from the given itinerary without prior intimation to them, causing both inconvenience and disappointment. For example, Respondents had paid extra money for some optional visits in London for two days but the Petitioners clubbed the optional tours for both days for the second day. Since the Petitioners had made prior arrangements to meet friends and relatives on the second day evening, they could not avail of both the tours on that day. Similarly, a visit to Pompeii was cancelled in favour of another destination, Patras. Other lapses included change in cruises, unduly long waiting time and problems with

the Visa in Dubai as well as curtailment of the Dubai trip by two days. In Dubai, Respondents also lost a valuable Cuckoo Clock. In respect of the tour for the following years, which the Respondents changed from Australia to Singapore, Petitioners charged a large amount and also did not cooperate with them, because, the Respondents had issued a legal notice to them after the European tour fiasco. Petitioners insisted in this case that legal notice be withdrawn before they would make necessary arrangements for the Singapore Tour. Aggrieved by this deficiency in service, Respondents filed a complaint before the District Forum seeking the following reliefs: 1. Rupees One lakh for not showing them the places indicated in the itinerary during the London visit.

2. RUPEES One lakh for not showing them Pompeii as listed in the itinerary. Rupees One lakh for arranging a stinking vessel cruise instead of the promised luxurious vessel to the Greek Islands and Turkey.

Rupees Four lakh for causing mental agony, humiliation and sufferings at Dubai Airport and not arranging for their visas

3. RUPEES Fifty Thousand as compensation for the loss of their Cuckoo Clock and for the various international calls made from Dubai International Airport. Rupees Two lakh for canceling the free Singapore Trip at the last moment.

4. ARRANGE free holidays for the Petitioners for the next five years or in lieu to pay Rupees Ten lakhs. Petitioners in response to the above contentions have denied any deficiency in their service and pointed out that whatever changes were made in the itinerary was, because, as Tour Operators they do not have any direct control over or own any hotel, airlines, cruises, coaches etc. Therefore, deviations/ charges sometimes become necessary due to last minute changes in the travel schedule, non-availability of service at the last minute (as happened with respect to one of the cruises) weather and other similar reasons, which are beyond their control. It is because of such eventualities that all their customers/ clients are informed in the Brochure itself that Petitioners are within their right to modify or alter the visits etc, from the given tour itinerary. On the few occasions when this happened during the Europe tour better alternative arrangements were invariably made and extra money was also not charged from the clients. For example, Petitioners pointed out that the Pompeii visit had to be cancelled at the last minute, because the Blue Star Ferries had cancelled their cruise. Petitioners arranged a trip in lieu to another historic place, Patras. The luxurious Cruise trip to Greece had to be cancelled, because the cruise services were suddenly discontinued. All customers eventually were booked in a better luxurious vessel with superior suites and although this cost more than the earlier cruise, Petitioners did not take any extra money from their customers. In Dubai, visas were arranged through Emirates Airlines, but due to some miscommunication of Emirates Airlines some members of the trip had to pay again for the visas. This money was later reimbursed to all the persons who had produced proof that they had again paid for their visas at Dubai. Respondents however, did not produce any such proof till date. Regarding the trip for the following year, while it is a fact

that the Respondents had paid US \$150 towards the Travel Club Membership they did not pay for the Australian tour and instead chose the Singapore tour. Petitioners agreed to this change as a special case and informed the Respondents about it vide their letter dated 03.09.2002, but they naturally want the Respondents to withdraw the baseless and false complaints made by them which the Respondent refused to do. District Forum after considering the evidence produced by both the parties concluded that there was indeed deficiency in service on the part of the Petitioners on some specific dates. The details of these alongwith the relief given by the District Forum are as follows: 1. Clubbing of two days optional trip in London into one day for which Rs.30,000/- be awarded to the Respondent. 2. Cancellation of visit to Pompaii for which the Respondents should be paid Rs.30,000/-. 3. Problems with visas and other inconveniences at Dubai for which Respondents should be paid Rs.20,000/-. The District Forum did not find any other deficiency in service which could be attributed to the Petitioners. It therefore, allowed the complaint in part and ordered as follows: The complaint is partly allowed by directing the OPs to pay an amount of Rs.80,000/- and also direct to arrange a free holidays to the complainant for next four years and Rs.2000/- towards costs. This order shall be complied within one month from the date of this order. Aggrieved by the order of the District forum, the Petitioner/ complainant filed an appeal before the State Commission. The State Commission upheld the order of the District Forum stating that it was a well-reasoned order and did not suffer from any infirmity. The appeal was thus dismissed and six weeks time was given to the Petitioners for compliance.

5. AGGRIEVED by the order of the State Commission, the Petitioners have filed this revision petition. Learned Counsel for the Petitioners was present. None was present on behalf of the Respondents. Respondent(s) who had been appearing in person earlier had however not appeared in the last three dates of hearing prior to 29.04.2010. On 29.04.2010, it was ordered that Respondents be issued notice and in case, Respondent(s) do not appear on the next date of hearing, they shall be proceeded ex-parte and the revision petition be disposed of in their absence. Notice issued to the Respondents, thereafter has been returned with the postal remarks not claimed. Service is thus complete.

6. LEARNED Counsel for the Petitioners in his oral submissions has again reiterated that there was no deficiency in service on their part and what ever minor changes were made during the 22 days European Tour, was because of reasons beyond their control and were replaced with better alternatives. Therefore, the learned Fora below erred in penalizing them. Further, the special holiday offer for five years was only for a limited period which ended in 2006 and the scheme is no longer available. Under these circumstances, it will not be possible to implement the orders of the learned Fora below to make available free holidays under the Scheme for the next five years to the Respondents. We have considered the statements of the learned Counsel and have gone through the evidence on record. It is a fact that some changes in the tour itinerary were necessitated perhaps because of reasons beyond the control of the Petitioners.

Moreover, it also a fact Petitioners had clearly stated in their brochure that they have absolute right to alter amend and modify their itinerary. On the other hand when people opt for such Tours they do have expectations and preferences about the specific places which they would like to visit and which are included in the itinerary. When, at the last minute they are unable to visit these places (in the case of Respondents Pompeii and places in London), it does cause both inconvenience and disappointment. Even in Dubai, because of miscommunication on the part of Emirates Airlines, it is a fact that the Respondents had to face inconveniences in connection with their visas and other formalities. Under these circumstances, the orders of the State Commission and earlier the District Forum directing the Petitioners to compensate the Respondents for their deficiencies in service by paying a sum of Rs.80,000/- is reasonable. We therefore, uphold this part of the impugned Order. However, since the five years free holiday Scheme is no longer being offered by the Petitioners, obviously, it is not possible for them to comply with the orders in respect of a Scheme which does not.

We therefore, set aside the order of the State Commission by which Petitioners have been asked to provide free holidays to the Respondents for the next five years. In sum, Petitioners are now directed to pay Rs.80,000/- to the Respondents within a period of four weeks from the date of the pronouncement of this order as well as Rs.2000/- towards cost. Ordered accordingly.