(1998) 03 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (I And R) APPELLANT

Vs

INDIAN AIRLINES RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Citation : 1998 1 CPC 8 : 1998 1 CPJ 41 : 1998 1 CPR 241

Hon'ble Judges : S.K.Parthasarathy , R.K.Anand J.

Final Decision : NOE discharged

Judgement

1. A Notice of Enquiry (NOE) was issued to the Indian Airlines, New Delhi on 24.6.1993 under Section 36B(e) read with 36A(1)2 of the Monopolies and Restrictive Trade Practices Act, 1989 (the Act in brief) based on a complaint filed by Director General of Investigation and Research (the DG for brief). The respondent the Indian Airlines was charged with indulgence in unfair trade practices.

2. THE facts of the case as alleged in the complaint in brief are as follows : In the aircraft Airbus 300 operated by the Indian Airlines there are four seats in executive class which are numbered as 5A, 5B, 5G and 5H. These four seats are like seats of economy class in size though occupants of these are charged executive class fare. The attention of the passengers is not drawn to this fact regarding these four seats. The Indian Airlines is charged with misrepresentation falling under unfair trade practice within the meaning of Clauses (i) and (ii) of the Section 36A(1) of the Act.

In reply to the NOE, the Indian Airlines filed a reply. The main points contained in the reply are summarised below : 1. The width of each of the four seats under question is approximately 20.65 inches compared to other seats in the executive class which have a width of approximately 23.46 inches. However, the seat pitch available for the passengers on these four seats is approximately 38 inches (same as other executive class seats) as against the seat pitch available in the economy class which is approximately 30 or 31 inches. These four seats are more comfortable than the seats in the economy class. 2. The design of these four seats was necessitated due to technical and operational reasons as per the advice of the manufacturers of the aircraft. 3. The passengers occupying these four seats are provided with the same facilities and personalised service which are available to other executive class passengers like exclusive counter for checking in, additional baggage allowance of 10 kgs. supply of hot and cold towels during flight, higher ratio of crew for service to passengers and other additional facilities relating to serving of refreshments etc. 4. Since these four seats are incapable of being installed outside the executive class compartment in view of the aircraft design, the occupants cannot be treated as economy class passengers.

3. THE instructions regarding the handling procedures for executive class passengers provide that passengers'' choice for specific seat should be ascertained before assigning the seat number and to the extent possible these four seats should be allotted to non revenue passengers. Whenever these seats are allotted to revenue passengers, the passengers should be briefed about the seats. THE following issues were framed in this case : (i) Whether the respondent has been indulging in an unfair trade practice as made out in the NOE ? (ii) If answer to issue No. (i) is in the affirmative whether the said practice is prejudicial to public interset, interest of the consumer or consumers generally ? (iii) Relief. Our answers to the above issues are as follows : (i) In the negative (ii) Does not arise (iii) Does not arise

THE reasons for arriving at the above findings have been discussed in this order. 5. During the Enquiry the DC produced two witnesses, namely, Shri Mahendra Ghilani and Mr. Madhup Waghani on whose complaints the preliminary investigation report was based. On behalf of Indian Airlines Shri R. Sahai, Manager (Commercial) appeared as a witness. On behalf of the respondent Shri Sahai stated that, since 1995, in Airbus 300 aircrafts the four non-standard seats in question in the executive class have been replaced by two seats exactly similar to the other seats in the executive class. We have carefully gone through the records of the case. We gave a hearing to Mr. V.K. Mehta, learned Advocate for the DC and Mr. Lalit Bhasin, learned Advocate for the respondent. We have come to the following conclusions :

4. THE fact that seats 5A, 5P, 5G and 5H in Airbus aircraft were smaller in dimension than other seats in executive class in not in dispute. THE respondent has established that though these seats differ from other seats they are not the same as in the economy class and are more comfortable because of the longer pitch available. THE learned Counsel for the DG argued that a passenger who pays a higher fare for travelling in the executive class looks to comfort in sitting more than anything else. If he is assigned one of the four seats he finds that he has not been subjected to the same treatment as other passengers even though he had paid the same fare and, therefore, is a victim of unfair trade practice. THE fact that these seats were subsequently replaced by standard executive class seats gives a lie to the stand of the respondent that the installation of these

seats was beyond their control. The learned Counsel for the respondent points out that excepting a slight variation in the dimension of the seat, the passengers occupying these four seats have received the same treatment as other executive class passengers. The instructions for handling procedures apart from directing that the passengers'' choice of seats should be taken into account enjoin that the passengers who are allotted these seats are properly briefed. The seats in the executive class Airbus 300 aircraft are uniform since 1995 and no grievance of passengers on this account survives now. We find from the facts of the case that the passengers who travel by the executive class in the Airbus 300 were subjected to the same treatment and were given additional facilities which are not available to the passengers travelling in economy class and there is no dispute on this. The only point emphasised by the DG is that the comfort afforded by the seat is a major consideration in the mind of a passenger who chooses to travel by executive class and, therefore, the respondent is guilty of charge of unfair trade practice.

5. WE are of the view that taking all the facilities which are granted to the execu tive class passengers and the compulsions of the respondent dictated by the design and structure of the aircraft, the fact that the few seats are dimensionally different from the others cannot by itself expose the respondent to the charge of unfair trade practice. It was, however, essential that the passengers travelling by executive class were made aware of the difference between these four seats and other seats in the executive class at the time of booking and the passengers at were assigned these seats only when other seats have already been allotted or at their own request. While the existence of instructions for the staff of the respondent to this effect was brought on record, there was no proof that in practice this was being done. Shri Mahendra Ghilani, the witness of the DG specifically stated in his evidence that the ground staff of the respondent did not point out anything relating to these four seats and only when he was allotted seat No. 5A and after occupying the seat that he found out the difference. This was not challenged during the cross examination. WE are, therefore, constrained to observe that the respondent did not make all out efforts to save themselves from the charge of false representation even though the action on their part to categorise these four seats as executive class by itself does not prove the charge against them. WE note that the respondents have removed the cause for the complaint and all seats in the executive class are now of uniform dimensions giving all the executive class passengers the same treatment. In the circumstances of the case we do not think any action under Section 36D is required and discharge the NOE accordingly. There is no order as to cost. NOE discharged.

