(2003) 07 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

KUSHAL CHAND DANGER — APPELLANT

Vs

SINGAPORE AIRLINES LTD. — RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Citation : 2004 3 CPJ 629

Hon'ble Judges : M.A.A.Khan , Sushma Tanwar J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant, on dismissal of his Complaint No. 3223 of 1994 by the District Forum, Jaipur-I, vide order dated 29.6.1995, is in appeal before us.

2. HEARD the learned Counsels for the parties. On 17.1.1994, the appellant had hired the services of respondent No. 2 through respondent No. 1, their booking agent at Jaipur, to carry a parcel of precious stones valued at Rs. 2,71,049 and deliver the same to M/s. M.E.M. Zackey at Singapore. The cargo was duly transported by respondent No. 1 to Singapore but since the delivery thereof was not taken by the said party, the appellant, vide his letter dated 4.2.1994, required respondent No. 1 to re-transport the parcel to Jaipur. By its Fax Message passed to the appellant on 26.2.1994, respondent No. 1 required him to send a Demand Draft for Rs. 27,104/- towards charges for freight, storage and demurrage. Along with his letter dated 26.2.1994 the appellant sent to respondent No. 1 a draft of the aforesaid amount contending at the same time that he was liable to any charges for storage and demurrage upto 4.2.1994 only. By their Telex Message dated 4.3.1994 (Annexure 7) respondent No. 1 furnished the details of charges amounting to Rs. 34,188/- upto 8.3.194 and giving set off of Rs. 27,104/- thereto requested the appellant to remit the balance amount of Rs. 7,084 before 8.3.1994. The aforesaid amount was remitted by the appellant to respondent No. 1 on 7.3.1994. However, respondent No. 1 re-despatched the cargo on freight-to-pay basis and the appellant had to take delivery thereof after making payment of the freight, loading-unloading charges and storage charges amounting to Rs. 42,004/- on 27.3.1994. The amount of Rs. 34,188/- (Rs.

27,104 + Rs. 7,084) was, admittedly, refunded by the respondents to the appellant on 28.3.1994. The contention of the learned Counsel for the appellant is that once the appellant had required the respondents on 4.2.1994 for sending the cargo back from Singapore to Jaipur, he could have been charged for storage and demurrage upto 4.2.1994 only and that in sending back the cargo as late as on 27.3.1994 and charging a sum of Rs. 42,004/- for freight, storage, demurrage, etc., etc. at the time of delivery of the cargo to the appellant were acts of deficiency in service on the part of the respondents.

The learned Counsel for the respondents has, on the other hand, explained that when the cargo had remained lying with the respondent at Singapore as unclaimed for sufficiently long time, they had to advise the appellant to look into the matter and pay the storage and demurrage charges as per practice of the business before taking the delivery thereof and it was in response to respondent''s such request that the appellant had though remitted the amount of Rs. 27,104/- but had claimed to restrict his liability to pay the aforesaid expenses upto 4.2.1994 only.

3. IT was also urged by the learned Counsel that as per trade practice adopted in the cases of request of re-shipment of cargo back to the place of their original shipment, an estimate of the expenses, in respect of which calculation of storage and demurrage charges were uncertain due to time to be consumed being quite uncertain and unspecified, is made and the party is required to deposit such charges which were to be retained as security for freight charges till the delivery of the shipment is taken by the sender of the goods at the place of original shipment, and if the shipment is so received by the sender the amount received and kept as security is refunded to the sender. IT was submitted that the respondent had acted according to the well recognised practice of their business and did not render deficient service to the appellant in any manner. We find merit in the arguments advanced on behalf of the respondent. It is undisputed that although appellant''s parcel had been carried by the respondents to Singapore well within time but the buyer of the contents of the parcel had refused to be taken delivery thereof and, therefore, the same had remained lying with the respondent No. 1 as "unclaimed". The respondents were entitled to claim storage and demurrage charges in respect thereto from the appellant.

4. MR. Moksim, the Senior Manager of Northern India Singapore Airlines, New Delhi, has deposed in his affidavit that the amount of Rs. 34,188/- (Rs. 27,104 + Rs. 7,084/-) was charged as "security" for payment of charges to be incurred on recall of cargo by the appellant and that the same was refunded to him soon after appellant''s taking delivery of the cargo at Delhi after making payment of Rs. 42,004/-. The deponent has further explained that the difference between the amount actually paid by the appellant at Rs. 42,004/- and that deposited by him at Rs. 34,188/- was on account of storage charges from 8.3.1994 to 17.3.1994 and other charges, as shown in the Airway bill but which had not been taken into account while demanding Rs. 34,188/-. In the nature of the business

activities being carried on by the respondents the deposition made by the Senior Manager of the respondent seems to be in conformity with trade practice and the prudency of businessman. The goods in question attracted storage and demurrage charges on account of the buyer refusing to take delivery thereof at Singapore, then time was consumed by the appellant in asking the respondent to bring back the goods on freight to be on paid basis, which was not acceptable to the respondent, and expenses, as reflected the Airway bill dated 17.3.1994 exceeded the amount of Rs. 34,188/- which were received by the respondents by way of security amount only and refunded to the appellant soon after his taking delivery of goods at Delhi. Under such circumstances the respondents cannot be said to have rendered deficient services to the appellant. In the result the appeal is dismissed with cost on parties. Appeal dismissed.