
(2010) 03 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Lufthansa German Airlines

APPELLANT

Vs

Indian National Science Academy Bahadur Shah Zafar Marg

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Citation : 2010 0 NCDRC 19

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Final Decision : Appeal is thus allowed

Judgement

1. ANUPAM Dasgupta This appeal challenges the order dated 27.03.2009 of the Delhi State Consumer Disputes Redressal Commission, Delhi (in short, the State Commission) in complaint case no. C-185 / 2000. By this order, the State Commission held the appellant Lufthansa German Airlines (original opposite parties) guilty of deficiency in service in failing to adequately assist the Director and the Executive Secretary of the Indian National Science Academy (INSA) the complainant before the State Commission - at Frankfurt airport in catching the connecting flight to Paris so that they could reach Dakar, Senegal. These two Indian delegates, passengers of the appellant airlines, had to reach Dakar latest by the evening of 22.11.1999 so as to be able to attend the 7th General Assembly conference of the Third World Academy of Science (TWAS) which was to be held at Dakar during 23-26.11.1999. Allowing the complaint, State Commission directed the appellant airlines to pay a compensation of Rs.2.5 lakh on account of harassment, etc., and cost of Rs.10, 000/- to the complainant.

2. (I) The facts and allegations leading to the complaint have been recorded in detail in the Impugned order. (II) Suffice it to note that on reaching Frankfurt by Lufthansa flight no. LH 761 on 22.11.1999 at 0715 hours, these two passengers set out to board the FrankfurtParis flight no. LH 4172, which was scheduled to leave Frankfurt at 1150 hours and reach Paris at 1300 hours. Reaching Paris by the said time on 22.11.1999 was important for these passengers because they had to catch the Air France flight no. AF 718, leaving Paris at 1630 hours to reach Dakar the same evening and thus be able to attend

the Dakar Conference on Its opening day, I.e., 23.11.1999. (III) The admitted position is that the weather at Frankfurt on 22.11.1999 was inclement and there was heavy snowfall. Thus, though the two passengers were issued boarding passes for the flight LH 4172, they were first informed that the flight would not take off at the scheduled time and later that it had been cancelled altogether. They were, however, booked on another flight LH 4114 leaving Frankfurt at 1220 hours and boarding passes were issued. However, this flight too was delayed and, according to these passengers, they were not informed the reasons for the delay or its likely departure time. They were then forced to contact a senior officer of Lufthansa Airlines and apprise him of the importance of their being able to reach Paris and catch the Air France Paris Dakar flight no. AF 718 departing Paris at 1630 hours. However, the said officer informed them that most flights were getting delayed on account of heavy snowfall at Frankfurt and there was no certainty of the flight timings. Still, he suggested that they try to get seats on the Air France flight 1619 departing Frankfurt at 1350 hours. After considerable difficulty and loss of time, they were able to reach Air France flight counter, to be only told that no seats were available on the Air France flight no. 1619. Thus, the two passengers were stranded at the Frankfurt Airport without help from the officials of the appellant airlines. As it was necessary for them to be present at TWAS conference on the opening day (23.11.1999) and the last flight from Paris to Dakar was scheduled to depart Paris at 16:30 hours (on which they were booked), they were left with no option but to give up the idea of going to Dakar at all. Finally, they were able to get seats on the Lufthansa Airlines LH 7160 for Delhi on 22.11.1999. They returned to Delhi on 23.11.1999 having failed to attend the conference. (iv) On return, the officers of the complainant corresponded with the appellant airlines at Delhi narrating the serious difficulty to which they had been put at Frankfurt because of the unhelpful and callous conduct of the officials of the airlines at Frankfurt. According to them, it was this unhelpful attitude of the officials of the appellant airlines at Frankfurt that caused them so much stress and inconvenience and also led to their inability to reach Dakar in time to attend the opening day of this very important international conference. They, therefore, demanded refund of the entire amount paid for the Delhi Frankfurt Delhi tickets, which they had to pay without being able to attend the conference in question. (v) The local officers of the appellant airlines sought to explain that the matter was beyond their control because of the weather conditions at Frankfurt on 22.11.1999 and the officials of the appellant airlines at Frankfurt could not have done anything within their powers to ensure that the two passengers were able to reach Paris in time to catch the flight on 23.11.1999. They, therefore, regretted their inability to refund the cost of the tickets because the passengers had actually availed of the flights between Delhi and Frankfurt and back. However, as a gesture of goodwill, the appellant airlines offered to upgrade these two passengers to business class travel whenever they next chose to travel by appellant airlines. (vi) Dissatisfied with this response, the complaint in question was filed. The appellant airlines, the opposite party before the State

Commission, contested the allegations in the complaint, mainly on the grounds summarised above. However, on consideration of the pleadings, evidence and documents brought on record, the State Commission passed the impugned order. We have heard Ms. Neelam Rathore, learned counsel for the appellant and Ms. Anjana Gosain, learned counsel for the respondent and have considered the material on record carefully.

Ms. Rathore vehemently argued that there was no question of deficiency in service on the part of the appellant airlines because the cancellation/delayed departure of the Frankfurt Paris flight on which the passengers were booked was on account of the weather condition at Frankfurt on the relevant day, a factor beyond the control of the airlines. Further, the airlines officials at Frankfurt tried to help as much as they could, by first booking seats for them on an alternative flight LH 4144 departing Frankfurt at 1220 hours. However, because of the same reason, i.e., inclement weather and heavy snowfall, that flight was also delayed. Secondly, the appellant airlines official also suggested their trying an Air France flight. Thus these airlines officials tried to assist the passengers as much as they could despite the all-round chaos at the airport due to delays/cancellation of all departing flights. Thirdly, these two officers of INSA could have taken a flight to Paris and further to Dakar on the next day and attended the remaining days of the conference at Dakar. However, for reasons best known to them, they chose to take the return flight to Delhi the same day, i.e., 22.11.1999. These passengers were booked for their return journey on 26.11.1999 had the main purpose of their visit to Dakar was to be able to attend the first day conference of the General Assembly on 23.11.1999, there would have been no need for them to book return journey tickets for 26.11.1999. Ms Rathore also stated that the fare for the unused legs of the journey was refunded to the passengers.

3. ON the other hand, Ms. Gosain, learned counsel for the respondent/complainant argued that the attitude of the officers of the appellant airlines at Frankfurt was totally unhelpful and these important passengers, delegates representing India at the aforesaid conference, were made to run from one counter to another in vain. None of these officials provided any satisfactory explanation or any information about the extent of likely delay, leave alone actively assisting the passengers in reaching Paris before the scheduled departure of their Paris Dakar flight. Secondly, it was extremely important for these two officers of the complainant to remain present on the opening day of the conference for the reasons explained in detail in the complaint. As they were unable to do so, it was fruitless for them to stay on in Frankfurt on 22.11.1999 and try to reach Dakar so as to attend the conference for remaining two days. We have carefully considered the submissions of the learned counsel for the parties and the material on record. As noted, the inclement weather conditions, including heavy snowfall at Frankfurt on 22.11.1999 is an admitted position. In this situation, the version of the appellant airlines that the runways at the airport got heavily iced and the on-going process of de-icing led to severe dislocation of

all flight schedules has to be believed. From a reading of the complaint, the OPs written version and the complainants rejoinder, it is also clear that the officers of the appellant airlines at Frankfurt did try to help the two passengers by booking them on an alternative Frankfurt Paris flight, which was scheduled to depart Frankfurt at 1220 hours. Even that flight could not take off in time for the same reason, viz., adverse weather conditions. It can be nobodys case that even in the face of such weather conditions, the appellant airlines could have somehow ensured timely departure of its particular flight to Paris on which these two officers of the INSA were booked. Moreover, the safety of the flights getting airborne from or landing at any particular airport is of primary concern and the Air Traffic Control, an independent technical authority determines the necessary measures for this purpose, particularly in adverse weather conditions. It is not the complainants case that despite clearance of the Air Traffic Control, the appellant airlines did not operate its Frankfurt Paris flight in question or delayed the flight/s for some arbitrary reasons. Moreover, as held by the Apex Court in the case of *Ravneet Singh Bagga v KLM Royal Dutch Airlines* [(2001) 1 SCC 66], to bring home an allegation of deficiency in service, the element of wilful action (or, as the case may be, inaction) needs to be established and the onus of proof of such action/inaction lies on the complainant. Given the unusual circumstances, we are unable to find such wilful neglect on the part of the appellant airlines officials at Frankfurt on the day in question. Secondly, we are not persuaded that the two officers of INSA could not have, under any circumstances, achieved the main stated purpose of their attending the said conference by attending the conference on any of the three days after the first day. In this context, it cannot be ignored that the return journey of these delegates was for 26.11.1999. It may have been desirable, on grounds of decorum and/or usual practice at such international/scientific conferences, for these two important delegates representing India to formally extend the invitation for the next General Assembly conference (proposed to be held at Bangalore in 2001) during the opening ceremony/day of the Dakar conference. However, no material has been placed before us to show that this next conference could not be at all held at Bangalore merely because of the inability to the two Indian delegates to remain present on the opening day of the Dakar conference, i.e., 23.11.1999. It is also not a part of the pleadings/averments in the complaint that from Frankfurt airport, they telephoned any of the senior scientists of the host body responsible for organising the Dakar conference and explained the unforeseen difficulty in which they were placed but were still were told that the invitation for the proposed Bangalore conference could be extended only on the opening day or that the planning therefor could not be initiated on any of the remaining days of the conference. Therefore, it does appear that that in arriving at its finding in the impugned order that deficiency is writ large in the conduct of the airlines, the State Commission has gone by the allegations in the complaint as undisputed facts and also misconstrued the law in holding that the onus of disproving the allegations lay on the airlines.

4. IN view of these reasons, we are unable to uphold the impugned order, which is clearly erroneous in law as well as in appreciation of the facts and circumstances of the case. The appeal is thus allowed and the impugned order is set aside. The parties shall bear their own costs.