

(2011) 10 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Pakistan International Airlines

APPELLANT

Vs

Bhagwan Dutt

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Citation : 2011 0 NCDRC 759 : 2011 4 CPJ 351 : 2012 1 CPR 328

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : petitions is dismissed

Judgement

1. APPELLANT Pakistan International Airlines has challenged the order of the State Consumer Disputes Redressal Commission of Delhi, passed in CC No. C-181/1999. The State Commission has allowed the complaint of the respondent, holding that the appellant PIA was guilty of deficiency in service in terms of section 2 (1)(g) of the Consumer Protection Act 1986. For the financial loss suffered, cost of the ticket, mental agony and cost of litigation, the Commission awarded a lump sum compensation of Rs 1 lakh in favour of the complainant.

2. THE appeal has been filed with a delay of nine days which, considering the facts and circumstances of the case, is condoned. THE facts in brief, are that the respondent/complainant, an Indian national, had been working in Riyadh, Saudi Arabia or several years. He was on a short visit to India, with his permission to re-enter Saudi Arabia ending on 19.12.1998. He had therefore obtained a confirmed ticket for 16.12.1998 from the Delhi office of the appellant/PIA. On the date of journey, the PIA cancelled the flight on the ground of heavy fog in Delhi. THE case of the complainant is that he was taken to Karachi on 17 .12.1998 by PIA with the assurance that we will be provided a seat in the connecting flight on the same day to Riyadh. This did not happen. THE complainant was kept by PIA in Karachi from the 17th to 22nd of December 1998 and then brought back to Delhi, on the ground that his permission to re-enter Saudi Arabia had expired on the 19th. The case of the complainant before the State Commission, was that he had a confirmed ticket on the cancelled flight. It was therefore, the obligation of the PIA to ensure that he reaches Riyadh on the 17th. More importantly, it has

been argued by complainant that the claim of the PIA that all flights from Delhi had to be cancelled on 16.12.1998 due to heavy fog is factually untrue. According to him certain other international flights, for example Saudi Airlines and the Gulf Airlines were able to fly out of the Delhi airport. The PIA should have refunded the cost of the cancelled flight, to enable him to travel by any other airline, so as to reach his destination in time. According to the complaint petition, the complainant spent another Rs.45,000/- and obtained fresh permission to enter Saudi Arabia but could not get his job back. This put him to a huge financial loss in terms of loss of arrears of pay, service benefits and continuation of employment.

The OP/PIA, admitted before the State Commission that the complainant did have a confirmed ticket on the cancelled flight and that it was purchased from Delhi. In support of their claim that the cancellation of the flight on 16.12.1998 was due to heavy fog in Delhi, the PIA produced copies of newspaper reports of the 15th and 17th at New Delhi. It is stated that it in view of the cancellation of the flight on 16.12.1998, the petitioner (complainant) was assured that he would be taken to Riyadh through Karachi with the hope that he would be able to secure a seat in the connecting flight to his destination. On account of heavy rush the complainant could not be secured a seat in any connecting flight going to Riyadh. As a good gesture and for helping the complainant the respondent tried the level best to accommodate the complainant in the connecting flights to Riyadh. The respondent failed as there was heavy rush because of large scale cancellation of flights. When the attempts made by the respondent to fly the complainant to Riyadh failed, the respondent had no choice but to bring the complainant back to Delhi, his starting point of the journey. This was done at the request of the complainant. The affidavit also claims that there was no request from the complainant to cancel his ticket and refund the money. It was open to him to do so and book himself on any other airline. His money would have been refunded, if he had expressed any desire to travel by any other airline.

3. THE State Commission rejected the attempt of PIA to produce newspaper reports as evidence of dense fog in Delhi and observed that no material or document was produced by the OP/PIA to show that fog was the reason for cancellation of the flight from Delhi. THE Commission also rejected the plea, raised on behalf of the OP, that jurisdiction under the Consumer Protection Act 1986, was precluded by the Warsaw Convention. The main ground relied upon by the PIA in the appeal before us is that the State Commission has completely ignored the fact that the contract between the parties was entered into at Riyadh. Therefore, the applicable law in the present case is Scheduled 2 to the Carriage by Air Act 1972. The State Commission had no jurisdiction under the Consumer Protection Act as the State Commission does not have extraterritorial jurisdiction. The State Commission should have held that the Carriage by Air Act 1972, being the special Act, would prevail over the provisions of the Consumer Protection Act, 1986.

4. WE have heard the counsels for the two parties and perused the records. It was vehemently argued by the counsel for the appellant/PIA that the respondent had purchased his ticket for the whole journey comprising Riyadh-Karachi-Delhi-Karachi-Riyadh at Riyadh in Saudi Arabia. Thus, the Airport of origin, as well as the eventual destination of the journey, was Riyadh and the respondent was technically in transit, in between. Therefore, the courts in India have no jurisdiction in the matter. This argument is not supported by the appellant's own stand taken before the State Commission. Learned counsel for the respondent/complainant has pointed out that the ticket to Riyadh was purchased at Delhi, from the Delhi office of PIA. It is apparently true. In the written response of the PIA it is stated that: "That as regards paragraphs No.7-8 it is submitted that the complainant had booked tickets from the Delhi office. It is admitted that the respondent company is providing flight to Riyadh." Again, in the affidavit evidence of Mr. Arshad Raja, Manager, North and Eastern India, Pakistan International Airlines (office at 26, Kasthurba Gandhi Marg, New Delhi), the following admission is made:- "That I say that as regards paragraphs No.7-8 it is submitted that the complainant had booked tickets from the Delhi Office. It is admitted that the respondent company is providing flight to Riyadh."

In the face of this clear admission that the ticket was purchased in Delhi and from the Delhi office of the appellant/PIA, we have no hesitation in rejecting the argument put-forth on behalf of the appellant, at the threshold itself. We also find that in para 13 of the appeal memorandum, the defence of heavy fog is taken not only in relation to cancellation of flight and resultant delay at Delhi, but also in relation to the delay in Karachi Airport. On the contrary, the case of the PIA before the State Commission was that the flight on 16.12.1998 was cancelled on account of bad weather (fog) at Delhi. The petitioner was assured that he would be taken to Riyadh through Karachi. He was accommodated in a flight to Karachi with the hope that he would be able to secure a seat in a connecting flight to his destination. "The complainant was kept in Karachi and constant attempts and endeavors were made by the respondents staff to secure him a seat in a connecting flight to Riyadh. On account of heavy rush the complainant could not be secured a seat in any connecting flight going to Riyadh. "It is thus, clear that the issue of fog was raised only in relation to the departure of the flight from Delhi. The stand of the PIA before the State Commission clearly was that the reason for complainant being stranded in Karachi from 17th to 22nd of December was heavy backlog of passengers. In the affidavit of the Manager of the PIA at New Delhi, it is very clearly mentioned that the Airlines failed to accommodate the complainant in flights from Karachi to Riyadh, as there was heavy rush because of total cancellation of flights. It is therefore, clear that the plea of intense fog not only at Delhi but also at Karachi Airport is a new plea raised in the appeal memorandum, which is not based on facts before the State Commission. Therefore, this plea is also rejected for being factually incorrect.

5. IT is clear that the appellant/PIA took the complainant to Karachi on 17.12.1998 assuring to provide him a connecting flight to Riyadh. IT is also clear

that it failed completely. So much so that the complainant remained stranded there till 22.12.1998. IT is also clear that this action of the appellant closed other options for the respondent/complainant. Had he been given refund at Delhi, instead of assurance to provide a seat at Karachi, he could have tried other airlines. We agree with the State Commission that this constituted a deficiency in service.

6. FOR the reasons detailed above, the appeal is dismissed for want of merit. The order of the State Commission is confirmed. No orders as to costs.