

(1993) 01 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

P.L.JAIN

APPELLANT

Vs

TRAVEL CORPORATION OF INDIA

RESPONDENT

Date of Decision : 02-01-1993

Acts Referred:

Citation : 1993 3 CPR 430 : 1994 1 CLT 412 : 1994 1 CPJ 68

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Complaint returned

Judgement

1. MR. P.L. Jain (complainant) has filed this complaint against (1) Travel Corporation of India, Clark Shiraj, Taj Road, Agra, (opposite party No. 1) and (2) Indian Air Lines, Air Lines House, New Delhi (opposite party No. 2) before the State Commission on 20.3.1992 praying that the complainant may be allowed compensation totalling Rs. 1,74,183/- from the opposite parties. The complainant got the ticket booked from opposite party No. 1, the agent of opposite party No. 2 at Agra on 12.6.91 from Aurangabad to Jaipur in Flight No. IC-492 for 16.6.1991. The scheduled time for departure which was given by opposite party No. 1 was 11.30 a.m. The fare which the complainant had paid was Rs. 1223/-. The complainant had to attend an important deal at Jaipur on 16.6.91 at 4.00 P.M. in the evening. The complainant was staying at Aurangabad and started for the Flight at right time. When the complainant reached the Aerodrome at 11 A.M. he found that Flight No. IC492 had already taken off at 7 A.M in the morning and the time mentioned in ticket No. 0582505503 which was issued to the complainant was old and contained wrong time. The complainant, therefore, stayed at Hotel Rama International in Room No. 204 for 16.6.91 and paid Rs. 2200/- as expenses for the day. Rs. 600/- were paid by him for his food etc. Rs. 160/- were paid as taxi hire. The complainant missed the flight as he was mis-led in the timing mentioned in the ticket by opposite party No. 1, the agent of opposite party No. 2. The complainant started for Jaipur on 17.6.91 by morning flight at 7.30 A.M. and reached Jaipur. The complainant went to fire out about the whole deal but was cancelled and given to somebody else because of non-arrival of the complainant on 16.6.91. The complainant suffered the loss

of Rs. 1,20,000/- due to break in the deal. The complainant had to attend a marriage party of his brother-in-law's daughter at Jaipur on 16.6.91. This marriage according to the complainant was the last marriage in the family. The complainant suffered mental agony for which he has claimed Rs. 50,000/-. The complainant further alleged that because of the non-attending of the marriage due to wrong timing the relations of the complainant became strained. The complainant suffered loss because of the carelessness of the opposite parties and, therefore, both the opposite parties are liable to compensate the complainant for it. He filed the complaint for Rs. 1,74,183/- against the opposite parties. In support of the complaint, he gave his affidavit. Besides that no other documents have been filed with the complaint. The complaint was presented on 20.3.92.

2. OFFICE reported that the complainant is resident of Agra and opposite party No. 1 has its office at Agra. Opposite party No. 2 has its office at Delhi. A show cause notice was issued to the complainant to show cause why this complaint be not returned for presentation before a competent Redressal Forum as prima facie the State Commission, Consumer Protection, Rajasthan lacks territorial jurisdiction. The notice was issued on 16.11.92. That notice was neither received after service nor undelivered. The registered envelope in which the notice was sent was also not received undelivered. More than 4 weeks had elapsed since the notice was sent by registered post. It was presumed that the complainant has been served. But the complainant did not appear today, the date mentioned in the notice. Sec. 11(2) of the Consumer Protection Act, 1986 ("the Act" herein) reads as follows:- (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction. (a) The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business, or personally works for gain, or (b) Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institutions; or (c) The cause of action, wholly or in part, arises."

According to Sec. 11(2) a complaint shall be instituted before a District Forum if the conditions laid down in Clauses (a), (b) and (c) are satisfied. By virtue of Sec. 18 of the Act the procedure specified in Sections 12, 13 and 14 and the rules made there under for the disposal of the complaints by the District Forum are with such modifications as may be necessary are applicable to the disposal of disputes by the State Commission. The principal question is whether the State Commission, Consumer Protection, Rajasthan has territorial jurisdiction to entertain the complaint, as the conditions laid down in Clauses (a) (b) & (c) of Sec. 11(2) of the Act are satisfied or the State Commission, Rajasthan lacks territorial jurisdiction. Sec. 20 C.P.C deals with suits to be instituted where

defendants reside or cause of action arises. Clauses (a), (b) & (c) are in pari materia with the Clauses mentioned in Sec. 11(2)(a), (b), & (c) of the Act. However to Sec. 20 an Explanation has been appended which is as follows:- "(Explanation):- A Corporation shall be deemed to carry on business at its sole or principal office in (India) or, in respect of any cause of action arising at any place where it has also a subordinate office at such place."

Opposite parties Nos. 1 & 2 are Corporations. A somewhat similar question arose before the National Commission in *Sunil Goyal v. Indian Airlines* (First Appeal No. 175/91 and First Appeal No. 180/91) decided on 27.2.92. It was observed as under :- Since the flight in question originated from Trivandrum and was to go to Delhi via Cochin and Goa, the alleged deficiency in relation to service rendered to the petitioner in relation to that flight occurred at Trivandrum when the petitioner's wife and child aged three and a half years were denied seats on the aircraft for the journey from Trivandrum to Delhi and hence the cause of action, on the basis of which the petitioner has brought the claim for compensation, arose in Trivandrum. The mere fact that the Indian Airlines has an office in Jaipur will not entitle the person aggrieved by the deficiency in service which took place at Trivandrum to seek redressal from the State Commission at Jaipur. This position is settled by order of this Commission entitled *Miscellaneous Petition Nos. 42 & 43 of 1990, Indian Airlines Corporation v. Consumer Education & Research Society & Anr.* case. Following the dictum laid down in the said ruling we are constrained to hold that the State Commission, Rajasthan acted wholly without jurisdiction in entertaining and adjudicating upon the complaint preferred before it by Shri Sunil Goyal, who is the appellant before us in Appeal No. 175 of 1991. On this short ground, we set aside the order passed by the State Commission and direct that the State Commission, Rajasthan shall return the Complaint Petition No. 104 of 1989 for representing before the proper Forum having jurisdiction.

The National Commission has referred to *Indian Airlines Corporation v. Consumer Education & Research Society* and Another, the *Petition Nos. 42 & 43 of 1990* decided on 6.9.91 reported in II (1991) CPJ 686 (NC). The National Commission followed the decision in *Indian Airlines Corporation's* case (supra). The jurisdiction of the State Commission is, therefore, governed by the general principles of law. The National Commission considered AIR 1955 SC 361 and AIR 1985 SC 582 and observed as under:- Even if the provisions of Section 11 of the Act are to be regarded as applicable in relation to the jurisdiction of the State Commission. It is to be noticed that Subsection 2 of Section 11 is virtually production of the language used in Section 20 of C.P.C. with only substitution of the expressions "opposite parties" for "defendants" and "complaint" for "suit" which changes are of no consequence so far as the scope and effect of the provision are concerned. In our opinion it will be reasonable to interpret Subsection (2) of Section 11 as laying down the same principle as is contained in Section 20 C.P.C. which is to be understood in the light of the Explanation appended thereto which is only clarificatory in nature. We are unable to agree

with the view expressed by the State Commission in the order passed by it in Consumer Education and Research Society and Anr. v. Canara Bank etc., II (1991) CPJ 148 petition of Complaint No. 5 of 1990 and (a copy of which order was produced and relied on before us by the respondents) that the Parliament must be taken to have deliberately committed the Explanation contained in Section 20(2) of C.P.C. while incorporating a provision similar to it in Sub-section (2) of Section 11 of the Act. In our opinion it will be reasonable to assume that the words used in Section 11(2)(b) were intended by Parliament to have the same scope, ambit and meaning as those contained in Clause (2) of Section 20 of C.P.C. as clarified by the Explanation appended to the said Section in the Code of Civil Procedure. It is well established that an Explanation is appended to a Section only with a view to explain the meaning of the words contained therein and it might well have been incorporated *ex-abundanti cautela* (See *Bengal Immunity Company Ltd. v. State of Bihar*, ABW 55 SC 661. and *S. Sundaram Pillai v Pattabiraman* AIR. 1985 SC 582. An Explanation is not a substantive provision in any sense of the term but is merely meant to "explain and clarify any ambiguities which may have crept in the statutory provisions. The proper function of an explanation is to make plain or, elucidate what is enacted in the substantive provision and not to add to or subtract from it. When this Commission enquired from the Counsel for the Respondent as to the precise objection to the jurisdiction of Consumer Disputes Forum being determined in accordance with the provisions of Section 20(2) of C.P.C, he could not spell out any. We are inclined to take the view that in construing the words actually and voluntarily "carries on business" occurring in Clauses (a) and (b) of Section 11(2) of the Act in relation to a Corporation, it would be proper to attribute to them the same sense as is carried by those words occurring in Section 20(2) of C.P.C. notwithstanding the absence of the explanation in Section 1(2) of the Act. The object and purpose of the Consumer Protection Act is to provide a speedy and inexpensive remedy to consumers as an alternative to the remedy already available to them by way of institution of a suit in the appropriate Civil Court. It does not appear to us to have been intended by Parliament that while instituting a complaint against the Corporation which has its branches spread all over India, a consumer should have the choice to file complaint anywhere in the country irrespective of where the cause of action, arose merely for the reason that the Corporation may have a branch office functioning in the particular place where the complaint is instituted. If Section 11 of the Act were to be interpreted in the manner contended for by the respondents it would lead to anomalous situations which are not conducive to the speedy administration of redressal justice by the Forum. To take one extreme illustration, if in the case of a banking company (which is a Corporation in the eye of law) in relation to a transaction which took place between a consumer and the branch of the bank in Kanyakumari, the consumer was to be at liberty to institute his complaint in Srinagar where a branch of the same bank may be functioning all the records relating to transaction and witnesses who can be in a position to speak about it would be at Kanyakumari while the trial of the complaint is to proceed at Srinagar. This would

be most inappropriate and undesirable from the point of view of speedy dispensation of justice as also of avoidance of unnecessary harassment, expenditure and inconvenience to the parties. With due respect, we are unable to share the view expressed by the State Commission, Gujarat in its order aforecited that the object of Parliament in enacting the Consumer Protection Act was to confer such a choice on the consumers to institute the complaint at any place within the country according to their whims and fancies. In our opinion it will be much more reasonable to assume that in respect of complaints instituted against a Corporation Parliament intended that the Forum before which a complaint is instituted should have either the nexus or accrual of the cause of action within its territory of the location of the principal office of the Corporation within its territory. We would therefore, hold that unless one of these tests is satisfied, the institution of the complaint before the Consumer Redressal Forum whether it be a District Forum of State Commission will not be legal and the Forum cannot validly exercise jurisdiction for adjudicating open such a complaint.

3. THE order rendered in Sunil Kumar Goyal's case (supra) is on all fours. Having perused the complaint and the law cited hereinabove, we are of the opinion that the State Commission, Consumer Protection, Rajasthan lacks complete territorial jurisdiction to entertain and hear this complaint. It is, therefore, ordered that the complaint be returned to the complainant for representation before a complaint redressal forum alongwith the affidavit after making the endorsement about the presentation of the complaint before the State Commission, the date of the order for return of the complaint and the date when the complaint is actually returned. A Photostat copies of the complaint as well as the affidavit will be retained here for record. The complaint is accordingly ordered to be returned. Complaint returned.