
(2003) 09 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

S.L.EXPORTS

APPELLANT

Vs

SINGAPORE AIRLINES

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Citation : 2003 4 CPJ 58

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint has been filed by M/s. S.L. Exports alleging deficiency in service on the part of the opposite party (O.P.) Singapore Airlines.

2. BRIEFLY facts of the case as they emerge from the complaint are, that this complainant got an order for export of a piece of Granite from Japan. It was to be a piece of 20 tonnes. A meeting reportedly took place in Madras on 14.11.1994 where alongwith the parties before us, a representative of the importer was also present. Allegedly during this meeting it was felt that one piece of 20 tonnes of granite would be difficult to handle by way of air cargo hence the weight of the cargo needs to be reduced. It was also allegedly agreed in this meeting that the cargo would be airlifted before 25.11.1994. Time was the essence of the entire transaction. In pursuance of this meeting the complainant sent three pieces of granite weighing less than 5 tonnes a piece, despite O.P.'s offer to lift cargo upto 10 tonnes a piece, on 21.11.1994 for which three Airway Bills were issued, when it was also brought to the notice of the opposite party, that cargo has to be airlifted on or before 25.11.1994. On 25.11.1994 the complainants were informed by the O.P. that they have not succeeded in airlifting the cargo for following reasons : "(a) The uneven surface of the granite blocks could not sit evenly on the wooden spreaders provided. (b) Due to the enormous weight of the stone the wooden spreaders provided were falling apart and crushed. (c) The special straps provided to hold down heavy weight also snapped due to movement of the stone."

The complainant vide a telefax dated 27.11.1994 informed the O.P. that they

must make arrangement to lift it within the next 48 hours from 27.11.1994, otherwise, legal action would follow. Since the cargo could not be airlifted within the above time limit prescribed by the complainant, vide its telefax dated 30.11.1994, the complainant decided to retrieve the shipment from the custody of the O.P. causing heavy losses not only in the present transaction but also with regard to future transactions. "Lapse" in rendering services on their part has been admitted by O.P. vide its communication dated 1.12.1994. Main plank of the complaint is that having agreed to airlift cargo during a meeting on 14.11.1994 and the complainant having agreed to reduce the weight of the cargo and yet failing to airlift it within the agreed time frame - where time was the essence of the contract - is a deficiency of service on the part of the O.P. - resulting in heavy losses to the complainant. The complainant has preferred this complaint claiming Rs. 79 lakhs for the O.P. on account of deficiency in service, comprising Profit Margin, amount paid payable as compensation to the consignee for his losses, and cost, of Rs. 49 lakhs, Rs. 25 lakhs, and Rs. 5 lakhs respectively.

In the written version filed by the opposite party, they have denied all the allegations and stating that there has been no deficiency in service. As per their version, a meeting did take place in Madras on 14.11.1995 wherein the details, size, shape and packing palletising of cargo was discussed. It is denied by them that time was the essence of the contract. After issue of Airway Bill, the cargo was straight driven to the airport by the Agent and O.Ps. never had an opportunity to see the packing of the cargo. Carting order was made which is a custom requirement. When the cargo was unloaded it was not found to be properly packed. Their local agents at the Airport, Air India found the cargo uneven, unpacked and not mounted on any wooden case and the weight of each package exceed the weight allowed hence could not be loaded on the lower deck of passenger flight. It is in these circumstances that O.P. decided to make arrangements of its airlifting by freighter flight on 24.11.1995.

3. WOODEN spreaders made at the Airport to load the cargo into the Freighter fell apart, being crushed by the weight of the cargo. Cargo was shaking on the base/spreader special straps provided to secure the cargo to the base/pallet snapped due to the movement of the cargo, hence in the interest of security of aircraft it could not be loaded on that day. This was admittedly communicated to the O.P. who admittedly gave two more days to airlift. It is a known position that the heavy cargo could not be sent through the normal passenger flight. It could be sent only on a freighter flight which was once a week. After 24.11.1994, the next freighter flight was to fly on 1.12.1994. Arrangements were being made to ship cargo by this flight, but before that date, the shipment was withdrawn. Since time was not of essence and since the cargo was not properly packed to be loaded into the aircraft and since the safety of flight/aircraft could not be sacrificed, the O.Ps. did their best and were doing their best to send the cargo by next available freighter flight, but it is the complainant who withdrew the cargo as their consignee reportedly cancelled the order for which the O.P. cannot be

faulted. There is no merit in the complaint - hence need to be dismissed with costs. Rejoinder was filed by the complainant reiterating the points made in this complaint and stating that time was the essence of the contract. Having accepted the cargo and having issued the Airway Bill as also the carting order, it does not fall in the mouth of the O.P. to say that cargo was not properly packed. At no stage were they informed of inadequacy of packing. This is an afterthought. There has been deficiency in service on the part of the O.P. causing loss to the complainant. The complaint needs to be allowed with costs.

4. AFFIDAVITS by way of evidence were filed. Arguments were heard. What we find is that the sole ground for filing the complaint is deficiency in rendering service on the part of 2nd O.P. by way of not reaching the cargo on or before 25.11.1994. Since, allegedly time was the essence of the contract (Airway Bill) and since O.Ps. clearly failed to make deliveries within the agreed time-frame, there has been deficiency on the part of O.P. resulting in cancellation of the purchase order by the consignee causing loss to the complainant. This has been the strain of the allegation in this complaint, in the affidavits filed by way of evidences, as well as, at the time of arguments. Admittedly, there was a meeting between the complainant, the buyer in Japan and the 2nd O.P., in Madras on 14.11.1994. What transpired there is not on record except the statement of the complainant that time-frame as well as the dimensions of the cargo were discussed. It is also the case of the complainant that only on the condition that the cargo will reach Japan on or before 25.11.1994, that the buyer placed the order on 19.11.1994. We have no record of what transpired during the meeting. Allegation on the subject of any time frame having been discussed on 14.1.1994 has been consistently and repeatedly denied by the 2nd O.P. We do not even have the affidavit of the consignee/purchaser or of the forwarding Agent M/s. Airlift Associates for that matter on record to support this particular allegation of the complainant. Agent is not even a party before us. Learned Counsel for the complainant persistently laid emphasis on Airway Bill being a contract between the parties. As per settled law there is no dispute. On these two sets of Airway Bill, complainant was unable to show any special instruction on the subject of delivery schedule or the date on or before which cargo must reach the consignee. In the absence of any proof, allegation that time was the essence of the contract, fails. Sequences of events is that cargo comprising three block of over 4 tonnes each is delivered by the forwarding Agent to the Airport direct on 21.11.1994. Carting order in respect of one Block is dated 21.11.1994 while for the remaining two it is dated 22.11.1994. When efforts are made to load them on 24.11.1994 into the freighter aircraft, it could not be loaded in view of problems of dimension and proper packing. Be that as it may, it is the prerogative of the Airline to do whatever is necessary for the safety of the aircraft. It is not the case of the complainant that no effort was made on 24.1.1994 to load these blocks in weekly freighter flight of the O.Ps. and it cannot be the case of the complainant that this cargo should have been loaded irrespective of the safety of the aircraft. Admittedly, it missed the flight of 24.11.1994 of which complainant was informed

by a letter dated 25.11.1994. Vide a Telefax message dated 27.11.1994 complainant gave further 48 hours to the 1st O.P. to deliver the cargo to the consignee in Japan. Somebody, like the forwarding Agency would have told the complainant that freighter service of the O.P. is once a week, i.e., every Thursday, 24.11.1994 was a Thursday, hence the next freight flight would be only on 1.12.1994. Thus, 48 hours ultimatum must appear to be hollow and meaningless. Even before the O.Ps. could do something on 1st December, 1994, the cargo was retrieved by the complainant vide its Telefax dated 30.11.1994, thus, depriving the opportunity to the O.Ps. to airlift the cargo on 1.12.1994, the next available freighter flight after 24.11.1994. If the consignee has refused to accept the shipment, O.Ps. cannot be faulted or held liable. As per material on record time was not the essence of the contract even then for this safety of the aircraft, weighty cargo blocks could not be shipped. Before giving time to O.P. to make the next attempt on 1.12.1994, shipment is retrieved by the complainant. We cannot, but agree with the O.P. that safety of aircraft is important at all times. No evidence to the contrary has been brought on record by the complainant. Within 10 days of receiving the cargo another attempt is to be made to ship the cargo but it is withdrawn one day before that date for whatever reason. How can the O.Ps. be held liable for any delay, in this sequence of events when time is not an essence of the contract.

5. IN the light of above discussion, we see no merit in the complaint as this complainant has failed to satisfy us "that time was the essence of the contract" as also, that within its capability, efforts were not made by the O.P. to ship the cargo. This complaint is devoid of merits, hence dismissed. IN the facts and circumstances of the case parties to bear their own costs. Complaint dismissed.