
(1998) 11 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Union of India

APPELLANT

Vs

SURAJ KUMAR CHHABRA

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Citation : 1999 2 CLT 143 : 1999 2 CPJ 323

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is by Union of India representing Railways challenging order of District Forum, Mansa dated August 29,1997 whereby following directions were given to the Railways to be complied with : "The opposite parties to remove deficiency in providing service to the travellers (general public) who daily travel through Railways at Railway Station, Mansa in respect of cleaning toilets and other urinals and further make provisions of suitable waiting hall for all classes of railway passengers and also provide sheds as per length of the Passenger/ Express Train on both sides of the platform. Further the more sitting benches should be got installed on both sides of the platform within a period of six months from the date of receipt of copy of order and similarly Railway Authorities are also liable to provide fully cleaned urinals and toilets in the railway compartments at the earliest"

2. THE appellants were also directed to pay Rs. 1,100/- as costs and compensation for the loss suffered to the complainant, Suraj Kumar Chhabra. Suraj Kumar Chhabra, the complainant after getting seats reserved for journey from Mansa to Delhi and back travelled by Punjab Mail. On December 16, 1996, he returned to Mansa. He travelled in Class Second. He noticed lack of facilities in the train as well as at the Platform, Railway Station, Mansa for which he moved the complaint before the District Forum. The opposite parties contested the complaint by submitting their version taking up different preliminary objections and denying the factum of taking journey by the complainant and finding deficiency in rendering service on their part in respect of the facilities referred to

above. However, it was stated that some plans were under consideration for extension of the Railway Station for providing more sheds for the passengers. The building was likely to be completed soon for which funds have been made available. Both the parties led their evidence on affidavits and documents.

Learned Counsel for the Railways has argued that the complainant could not be treated as a consumer as defined, particularly with respect to the amenities and the facilities, which the Railway was expected to provide at the Platform or at the Railway Station. In particular, reference has been made to the directions given by the District Forum with regard to extension of the sheds upto the length of the trains on both sides of the platform and raising new sheds for the passengers for all classes at the Railway Station, Mansa. He also argued that no evidence was produced by the complainant that he in fact had travelled by the Punjab Mail on the dates mentioned above that he could be treated as a consumer with respect to the journey performed on purchasing such a ticket. The present is not a case of sale of goods or finding defect therein as contemplated under the definition of consumer under Section 2(1)(d) of the Consumer Protection Act. The case would be governed by second clause which refers to hiring services of the opposite party for consideration and finding defect therein. The extract of Section 2(1)(d) (ii) is, therefore, referred to which reads as under : "(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

3. THE complainant produced his reservation slip before the District Forum, which is Ex. C2 for his journey by Punjab Mail from New Delhi to Mansa on payment of Rs. 114/-. Thus, the complainant who has given his affidavit that he has travelled on the aforesaid ticket on that day in Punjab Mail stands proved and thus he would be a consumer as far as availing the services of the Railways in the matter of performing journey from New Delhi to Mansa is concerned. The important question which requires consideration is as to whether by purchasing a ticket for performing journey by Railway, the complainant can be considered to be a consumer with respect to all other facilities either available at the Railway Station or which are required to be made available. The definition of the consumer as referred above is specific that the services of the opposite party are hired for consideration. The facilities which were not available at the relevant time at the Railway Station such as non-availability of sheds or toilets or passengers waiting rooms, can hardly be a subject matter of hiring much less for consideration. The FORA under the Consumer Protection Act has inherent lack of jurisdiction in giving the directions like making provisions of passengers shed upto the length of the Punjab Mail Train on both sides of the platform of Mansa or make provisions for more waiting rooms for the passengers for all the categories of passengers such as First Class passengers or passengers of AC Coaches etc.

4. PUBLIC interest litigation under the Consumer Protection Act is of different kind. Voluntary Organisations have been given right to file the complaints exposing causes of individual consumers. But that right has to be exercised in respect of hiring services of the opposite party for consideration as has been briefly noticed above. It is not for the FORA to act like a policy maker and to decide as to whether there was a necessity of passengers' shed on both sides of the Platform and that too upto the length of the Punjab Mail Train. What to say of the budgetary costs involved, it would be entering into the regime and spheres which are outside the scope of the FORA and are within the scope of Authorities of the Railways or Legislature as such. Taking up public projects as above, obviously involve huge expenditure not only at one Railway Station but at all the Railway Stations in the country. Unmindful of such expenditure, simple directions as the one given in the impugned order could not be given. We are of the view that the FORA had no jurisdiction in giving such directions as have been given in the impugned order particularly with respect to the construction of passenger sheds on the Platform upto the length of Punjab Mail Train and for providing passengers waiting rooms for all categories of travellers with lavatory facilities at the Railway Station. To that extent, the impugned order deserves to be set aside. There are some amenities and facilities provided at the Railway Station may be in the form of availability of drinking water or in the form of use of lavatories. On purchase of Platform Ticket, a person is invited to visit the Railway Platform. Likewise, a person purchasing a railway ticket for taking journey is to use the Platform either for boarding the train or for alighting there from. Such a person is also expected to use the lavatories available at the Platform or have the facility of drinking water at the Platform. Likewise, the passengers travelling in a train avail the facility of lavatories attached with the train. The ticket purchased by the complainant merely indicates hiring of the services of the Railways for performing journey by a particular train and on a particular day. Hence, if there was any deficiency either in the time or the arrival of the train or departure or non-availability of seats reserved that he could approach the District Forum for compensating the loss, if any suffered on account of either deficiency in rendering service or negligent act. The enjoyment of the facility as the kind of the two referred to above cannot be considered to be made available to the passengers on payment i.e., for consideration that the FORA could be approached for claiming compensation either for not making available such facilities or that condition of the premises making such facility available was such that the same could not be availed. Only a general allegation was made supported by affidavit of the complainant and that too in general that even in the train in which he was travelling the lavatories were not clean. No serious notice of such complaint can be taken as there is no assertion that water in the lavatories was not available. If the co-passengers for the best reasons known have made dirty the lavatories in the train, no negligent act can be attributed to the Railway Authorities for not providing Sweepers in the running train for Second Class Compartments. If during the journey at some Railway Station, a complaint had been lodged, probably the same could be attended to but the

shape of the lavatory as made in trains indicates that normally they remain clean even used by different passengers. With respect to the facilities of lavatories already existing at the Railway Platform or with the visiting rooms, the complainant could not be treated as a consumer as defined. Primary object of purchasing a ticket is to travel by a train for which Railway's services are hired that deficiency therein could be subject matter of consumer dispute. But any deficiency in the matter of providing facilities at the Railway Station or at the waiting rooms cannot be considered part of the contract of hiring services. In other words fare for the journey will not include consideration for availing such facilities at the Platform that any consumer dispute could arise.

5. IT may be observed that the above discussion is only with respect to the interpretation of the provisions of the Consumer Protection Act. If, otherwise a citizen had any right different from the consumer rights, he would be entitled to agitate the same and claim relief from the Civil Court or from the Authorities, if so advised. For the reasons recorded above, this appeal is accepted and the order of the District Forum is set aside in entirety. There will be no order as to costs in this appeal. Appeal allowed.