
(2001) 05 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

U.S.AWASTHY

APPELLANT

Vs

GULF AIR

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Citation : 2001 3 CPJ 131

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , S.P.Saberwals J.

Final Decision : Complaint dismissed

Judgement

1. COM-plainant Shri V.S. Awasthi has filed the present complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter briefly referred as "the Act"). COMplainant is the Managing Director/Chief Executive of a Fertilizer Manufacturing Organization. That respondents are a well advertised International Airlines claiming to provide very comfortable and a trouble free journey. It is stated that that taken in by the advertisements and tall claims made by opposite party - Gulf Airlines, complainant purchased "Business Class" air ticket for the sector "Delhi-Doha-Bahrain-Istanbul-Dubai-Delhi" for his journey commencing on 7.5.1994 and ending on the 14.5.1994. The said ticket dated 4.5.1994 bears conjunction ticket Nos. 0722404122331/32. That for the Bahrain-Istanbul-Sector of the journey on 8.5.1994, complainant was issued Boarding Pass bearing Seat No. 07A in flight No. GF-0041. COMplainant boarded the aircraft and occupied the designated seat. To his shock and dismay, he realised that the seat allotted to him had a fixed back and was not reclinable, like other seats. It is alleged that he immediately brought this fact to the notice of the representatives of the opposite parties on board and requested for change of a seat. However, his request was refused by the airlines on the plea that the flight was full and no alternate seat was available. It is stated that he was compelled to spend the entire journey period of six and a half hours in acute misery and discomfort which could have been avoided, had the opposite party been genuinely concerned about the comfort and well being of their passengers. COMplainant sent a legal notice dated 16.6.1994 to the opposite party and informed them that as the seat in question was defective and different from the rest, it was

incumbent upon the opposite party to have informed him about defect in seat before he boarded the aircraft so that if he so desired, he could have changed his mind about performing the journey in question. It is alleged that by not putting the complainant to such notice, the opposite party erred gravely in their duties. It is stated that by not informing the complainant about the defective seat well in time, the airlines have committed a breach of their contractual obligations as they have failed in their duty to provide proper and universally accepted service to the complainant and have, therefore, rendered themselves liable under the Act. It is prayed that opposite party be directed to refund to the complainant, the cost of the ticket in full and also to direct the opposite party to pay a sum of Rs. five lacs as damages for the agony caused to the complainant.

2. THE aforesaid complaint has been contested by opposite party - M/s. Gulf Air. In reply-cum-evidence by way of affidavit, it is denied that there is any deficiency in service on the part of opposite party - Gulf Airlines. It is admitted that the complainant held a business class ticket for his journey including inter alia for Bahrain-Istanbul sector. That complainant was allotted seat No. 7A. This seat i.e. 7A allotted to the complainant and seat No. 7J are in "Business Class". THEse seats are fixed seats as per the aircraft manufacturer's specification. That at the time of checking in, complainant had requested for a window seat and only this seat was available. THEse seats are wide and well cushioned seats with sufficient leg space. THERE was no defect in these seats at all. That complainant could not be provided an alternate seat because the flight was full. THERE were 16 1st Class, 12 Business Class and 95 Economy Class passengers. That ticket issued to the complainant was subject to various conditions of which condition No. 2 specifically stipulates that carrier does not undertake to provide any particular seat in the aircraft and that the passenger agrees to accept any seat that may be allotted to him on the flight in the class of service for which his ticket has been issued. It is also stated that as there was no defect in the seat, there was nothing to notify to the complainant. It is further stated that had there been any defect in the seat, the seat would not have been allotted to any passenger until such defect was removed. Receipt of notice dated 16.6.1994 from the complainant is admitted. It is stated that the same was duly replied vide letter dated 24.8.1994. THE seat was allotted to him as per his choice and in the class for which he was scheduled to travel. It is denied that the opposite party has committed any breach of any of the contractual obligation or that it had failed in its duty to supply the proper and universally accepted service to the complainant. It is prayed that the complaint be dismissed with special cost. Complainant adduced his evidence by affidavit and supported the pleas taken in its complaint. Mr. Jamal Al Harphy, Area Manager of Gulf Air Company filed his affidavit as evidence.

We have heard arguments advanced by Mr. M. Wadhwani learned Counsel for opposite party - Gulf Air Lines and have also carefully perused the written submissions filed by Mr. Manoj Verma learned Counsel for complainant.

3. ADMITTEDLY for the Bahrain-Istanbul leg of the journey on 8.5.1994, complainant travelled on seat No. 7A in flight No. GF-0041 operated by opposite party. It is not disputed by opposite party that the said seat was fixed back seat and it was not reclinable. Contention of complainant is that a duty was cast upon the opposite party to inform the complainant about the nature of the seat thereby leaving the option to travel or not on the said seat. It is also stated that statement of the opposite party that complainant had asked for a window seat is a bald statement. According to the complainant seat No. 7A was defective one as the same was not reclinable and, therefore, complainant had to pass six and half hours journey time uncomfortably. It is, therefore, contended that there is deficiency in service on the part of opposite party and complainant is entitled to the relief as asked for in the complaint. Learned Counsel for the complainant has also placed reliance on a decision of National Commission in case entitled *General Manager, South Eastern Railway v. Anand Sinha*, 1st Appeal No. 3/98. In the flight in question, there were on board 16 1st Class passengers, 12 Business Class Passengers and 95 Economy Class passengers. The flight was full to its capacity. In case any other seat in business class would have been available, complainant could be accommodated in one of the reclining seats. However as the flight was full, the request of complainant for change of seat could not be acceded to.

4. THE pertinent question that falls for consideration is whether seat No. 7A which was allotted to the complainant was defective one and whether airlines was obliged to inform the complainant and whether there is any deficiency in service on the part of airlines. Admittedly seat No. 7A which was allotted to the complainant and seat No. 7J in business class are fixed seats as these are by the side of "emergency exits". THEse seats are fixed seats as per aircraft manufacturer's specification. It is pertinent to state that these seats have been made fixed because these are by the side of emergency exits. THEse seats are wide and well cushioned seats with sufficient leg space. This position is affirmed in the affidavit of Mr. Jamal Al Harphy, Area Manager, Gulf Air Co., Delhi. During the course of arguments Mr. Wadhwani learned Counsel for opposite party had explained to us that these are kept fixed because these are by the side of emergency exits and in case of emergency one can jump on these seats to use emergency exits. In view of the fact that these seats are well cushioned with sufficient leg space and the fact that these are fixed seats as per aircraft manufacturer's specification, we find no hesitation in holding that there is no deficiency in service on the part of opposite party on this count. The decision of the National Commission relied upon is not applicable to the facts of the present case as facts in the cited case are entirely different. In the case relied upon, the complainant was travelling in the 1st class compartment where the fans were not working, iron shutters in the windows were not functioning, window glass panes were missing and the rexin in the berths were torn and nails exposed which caused some injury to the complainant's wife and it was held by the National Commission that the Railways were liable to pay compensation to the

complainant. In the case relied upon, there are no two opinions on the point that there was deficiency in service on the part of Railways. The facts in this present case are entirely different and, therefore, the aforesaid decision is not applicable in the present case. Secondly, we find that there is no defect in the seats as the above two seats are kept fixed as per aircraft manufacturer's specification as these are by the side of emergency exits. We, therefore, hold that there was no defect in the seat and in the circumstances opposite party - airlines was not obliged to inform the complainant at the time of checking in. We, therefore, hold that as there is no defect in the seat, there was no deficiency in service on the part of the opposite party.

5. CONDITION No. 2 of the conditions of carriage of passengers reads as under : "Carrier does not undertake to provide any particular seat in the aircraft. The passenger agrees to accept any seat that may be allotted to him on the flight in the class of service for which his ticket has been issued."

The aforesaid condition is binding on all the passengers including the complainant. In view of the aforesaid condition, complainant could not claim for allotment of a particular seat. We, therefore, hold that there is no violation of the terms and conditions by airlines and as complainant had agreed to accept any seat that might be allotted to him, we hold that there is no deficiency in service on the part of the airlines.

6. AS already stated above, in case any seat had been available in the business class which was reclining, airlines staff would have gladly accommodated the complainant. However, as the flight was full, complainant could not be accommodated in a seat which was reclining. Opposite party vide letter dated 12.7.1994 had informed the complainant that narrower body of aircraft A-320 in which complainant travelled, does not allow the same amount of space per seat as the wide body aircraft in their fleet. That business class brings many benefits aimed at particular requirement of the travelling executive. Separate check in facilities are available at most of their destinations as are exclusive lounges and business centres. That the business class passengers have priority embarkation and disembarkation, more cabin staff dedicated to the cabin and a superior food and beverage selection is provided in flight. Admittedly complainant has no grievance about any other facility which had not been provided to him. His only grievance is that a defective seat had been provided to him. We have already held above that the seat in question was not defective and that there was no deficiency in service on the part of opposite party-airlines.

In view of the above findings, complaint filed by the complainant is liable to be dismissed. Accordingly the same is dismissed. In the facts and circumstances of this case, parties are left to bear their own cost. Complaint dismissed.