

(2011) 04 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Voyags India (PVT.) Ltd.

APPELLANT

Vs

Indian Hotels Co. Ltd.

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : 2011 0 NCDRC 235

Hon'ble Judges : R.C.Jain , Vinay Kumar J.

Final Decision : Appeal dismissed

Judgement

1. VOYAGES India Private Limited has made this complaint under section 21 and 22 of the Consumer Protection Act 1986, against Indian Hotels Company Ltd. It was filed in the year 1998. On 13 April 2009 the complaint was dismissed for non prosecution and was subsequently restored on 3 July 2009. After the affidavit evidence of Shri I.V. Singh, Managing Director of the complainant company was filed, a request was made on behalf of the complainant to lead oral evidence. This request was disallowed by the Commission on 24th November 2009. The complainant challenged this order before the Supreme Court of India in an SLP, which was subsequently dismissed. On 13th September 2010, the arguments were concluded and the matter was reserved for orders. Before pronouncement of the orders, one of the members of the concerned Bench, Mr Justice K.S. Gupta, demitted office. The matter was therefore, heard afresh by another bench.

2. WE have perused the records of this case and heard the counsels for the two parties before the matter was reserved for orders on 23 February 2011. During the course of arguments, it was accepted by the counsel for the Petitioner that they are not in a position to produce any documentary evidence, except a receipt, in support of their claim that they had booked rooms in the Club floor. The relevant receipt of 24th October 1996 shows the name and size of the group, its dates of arrival and departure, period of booking and advance paid. It does not show how many rooms were booked in what category. The counsel stressed that their case was based on circumstantial evidence. Contrarily, as per the respondent, the bookings were done on 2nd September 1996 and for deluxe

rooms, not for the Club floor. The room tariff for Club rooms was substantially higher than that for Deluxe rooms. The case of the complainant is that in October ?November 1996, it had organised the tour of an American group in India. The stay of the group was arranged by the complainant at Taj Hotel, Man Singh Road, New Delhi (belonging to the Respondent Company) for four days on the journey up and three days on the journey down. For this purpose, the complainant had obtained reservation for 12 Club Floor rooms for the members of the group. An advance of rupees 50,000 was also paid. On 31 October 1996 leader of the visiting group, Anthony Underwood and a representative of the complainant arrived and were provided two rooms. Four other members checked into the hotel at 3:30 AM and were informed that no club floor rooms were available. Later, on their insistence that other members of the group also will stay in the same hotel, they were allotted ordinary rooms, after waiting for three hours. According to the complainant, on account of the ?nasty and indecent treatment meted out by the staff of Hotel Taj Mahal? the members of the group refused to stay in the hotel on the return journey and instead chose to stay at Oberoi Hotel for three days. Due to this, the complainant had to incur extra expenditure. The group also did not pay the complainant the entire agreed amount, resulting in further loss to the complainant.

Taking into account the total loss suffered, the complainant has prayed for grant of following relief ? i. the respondent Company should pay a sum of Rs. 32,98,575 to the complainant, and ii. also pay interest at 12% per annum on the above amount from the date of filing this complaint. The amount of Rs.32,98,575 claimed by the Complainant, is explained to comprises the following Rs.44960 towards additional expenditure of lodging the group in Oberoi hotel, Rs. 7,53,615 being short payment by the group, Rs.15 lakhs towards loss of future business with this group of American tourists, and Rs.10 lakhs towards mental agony suffered by the Sri I.V. Singh, MD of the Complainant company.

3. ACCORDING to the OP/respondent, Indian Hotels Company Ltd, the case of the complainant as detailed above, is ?absolutely misconceived and unsustainable". Between 30th October and 3rd November 1996, the complainant availed of various services and facilities at the respondents Hotel at Man Singh Road, New Delhi for which a bill for Rs. 4,17,747 was raised. The respondent has filed a civil suit for recovery of Rs.4,55,344 in May 1997. The present complaint has been filed thereafter in October 1998. As per the OP/Indian Hotels Co. Ltd, the complaint is ?an abuse of process of law in as much as the complainant has filed the complaint to merely avoid payment of the bill amount due from them.? Explaining the incident of 31st October/1st November 1996, the respondent has stated that the guests arrived at 3:30 AM. The check-in time of the Hotel being 12 noon, which was known to the complainant, rooms were to be provided at noon. However as the guests arrived before time, the respondent made clubrooms ready and the guests were accommodated. Respondents have further pleaded that as the bills were not paid for the stay till 3rd November and the bookings from 14th November had remained un-utilised and un-cancelled, a Bill

of rupees in rupees 417747 was raised by the respondent on 20th November 1996, after adjusting the advance of rupees 50,000 paid by the complainant. When no payment was received, despite two legal notices, OP/Indian Hotels Co. Ltd filed a Civil Suit No. 345/1997 for recovery of Rs.4,55,344 before Addl. District Judge Delhi. The Complainant had, as per records of the case, made an application before the Judge on 19th May 1999 for leave to defend the Civil suit.

4. ONE of the defence plea raised by the present complainant before the Civil Court was that he was not liable to pay the claimed amount in the suit because the hotel failed to provide rooms on the club floors as assured. This plea has been duly considered by the civil court and specific issue no.2 ?whether plaintiff had committed breach of contract in providing accommodation to Argrosy Group of USA at club Floor room at plaintiff?s hotel, if so its effect? OPD. It was answered by the civil court against the present complainant by observing as under:- ?Issue No.2:- The onus of this issue was on the defendant who has led no evidence. It is admitted by the defendant in the pleadings that 12 club floor rooms were booked from 30.10.96 to 3.11.96 and from 14.11.96, although it is pleaded that instead of club floor rooms, the customers of the defendant were provided ordinary rooms. The plaintiff in the replication has denied booking of club floor rooms and has stated that booking was for deluxe rooms but the plaintiff provided better facilities by providing club floor rooms. Booking has been made vide letter Ex. PW-1/3 and vide Ex. PW-1/2. The booking has been accepted for deluxe rooms between the representatives of the plaintiff and the defendant on 31.8.96 and this booking was also for the same group i.e. Argosy Group showing thereby that the booking was not for club floor rooms but it was for deluxe rooms. The plea of the defendant that the booking was for club floor rooms therefore cannot be accepted. Ex.Pw-1/2 also shows that the accommodation offered by the plaintiff for deluxe rooms category has been accepted by the defendant for the first visit. This issue is accordingly decided in favour of the plaintiff.?

This finding of the civil court has become final and conclusive between the parties and in our view the complainant cannot agitate this issue before this Commission. Even then we have considered the complainant?s case on its merit. According to the pleadings and affidavit evidence on behalf of the Complainant, they had booked 12 Club floor rooms in Taj Mahal Hotel, Mansingh Road, New Delhi and paid an advance of Rs. 50,000 for it. Para 3 in the complaint petition says ? A true and correct copy of the said letter dated 24.10.1996 of the complainant company addressed to the F.O.M, Taj hotel, bearing the receipt of the hotel, Taj Hotel, dated 26.10.96. is submitted as Annexure II.?. This Annexure II is in fact not a letter but a printed receipt of Voyages India Pvt. Ltd., which gives details of dates of visit, number of persons, schedules of arrival-departure and payment of advance of Rs.50,000. But, surprisingly, it is totally silent on the number of rooms and their category (Club or Deluxe). Contrarily, as per the pleadings of the respondent, the booking was for Deluxe rooms. According to the affidavit of the Respondent, ? However, there was no request for

Club floor room nor any confirmation was given for the same??The complainant had the confirmed booking for the Deluxe rooms, the respondent provided them better facilities by providing Club Rooms?

5. THE line taken in the Rejoinder affidavit of the Complainant is different. In para 4, it states ? Complainant Company has booked two categories of the room one standard room for Director of the Company and balance rooms at Taj Club floor for members of the said group.? Referring to the Civil Suit for recovery, filed by the Respondent in 1997 and decreed by the court in 2003, the affidavit says calls it ?counter blast? to the legal notice issued by the Complainant to the respondent. This apparently, refers to the document appended as Annexure III to the Complaint petition. It is undated and unsigned. THE Complainant has also produced a copy of the letter written by its Director, I.V.Singh to the general Manager, Taj Mahal Hotel on 4th November 1996. THE letter conveys annoyance of the visitors over delay of over three hours in giving rooms to two couples and over one of them not being given Club floor room. At the beginning of this letter, it is categorically claimed that, ?THE group was booked for club floor rooms.? But, it does not clarify how many rooms were booked and whether all were Club floor, as only one couple did not get Club floor room, according to this letter.

6. THE relevant para in the affidavit evidence of the Complainant, reads as follows? ? It is stated that the Managing Director of the Complainant company had approached to Taj Hotel Man Singh Road Delhi for 6 Double and 6 Single club floor rooms (for eighteen persons) and deposited Rs 50,000 as advance money (Rupees Fifty thousand only) between 1st November-3rd November, and 14th November to 16th November and one standard room for Managing Director of the Company himself. It is evidenced from the receipt dated 24.10.1996 which is marked and Exhibited herein as Exhibit C11.? Exhibit C11 is the receipt we have already examined earlier in this order. It does not mention the type or number of rooms, though it mentions other details. In the absence of any other document to substantiate the claim of the Complainant, Exhibit C11, read with the affidavit, can at best be taken as proof of request for, but certainly not of confirmed booking of, 6 single and 6 double rooms of Club category. Later in the affidavit, it is admitted by the Complainant that 10 members of the group were in fact, given rooms on the Club floors. The room numbers given in this affidavit tally with the room numbers mentioned against the names of specific occupants in the bills raised by the respondent hotel for the period 31st October to 2nd November 1996. The bills show departure on 3rd November at 7.54 hrs.

The only difference between the bills raised for this period and the pleadings of the complainant relates to four members of the group (Somerset Leeks and Ronald Reeves) who according to the complainant?s affidavit, were provided rooms ?below Club floor standard and comfort?. The complainant has referred to it as false and fabricated billing by the respondent. There is however, no explanation as to why the Complainant could not take up this billing issue with the respondent for rectification, when he had vigorously corresponded with the

respondent on the inconvenience caused to the concerned members of the group. In fact, the letter of 4th November 1996, written by Mr I.V.Singh, Director, Voyages India Pvt Ltd. in this behalf to Mr Ronie Lobo, General Manager of the hotel, (filed by the Complainant) even says that out of these two couples, one was eventually given Club floor room ?after great deal of harassment?.

7. THUS, the entire case of the complainant revolves around their claim that they had booked Club floor rooms for this group. But, they have completely failed to produce any credible evidence to establish this claim. According to the respondent, the rooms booked for the group, were of Deluxe type and not of Club type. Therefore, the complainant cannot derive any benefit from the fact that eventually all members of the visiting group (excluding the disputed case of one couple) were accommodated in Club floor rooms. In fact, this itself raises an issue about payment of the bills. There is no explanation why other members could not pay their bills, despite absence of any dispute relating to the rooms occupied by them. Equally, there is no explanation why the complainant waited for nearly two years, after his strong protest letter of 4th November 1996, to file this consumer complaint. The complaint was filed in September 1998, over one year after the respondent had already filed a Civil suit No. 345/1997, before the Addl. District Judge, Delhi, in May 1997, for recovery of these amounts. It is not for this commission to surmise what would have been the true facts behind such unpleasant outcome in this case. But, it will suffice to state that the complainant has entirely failed to prove his case. The petition is therefore dismissed with no orders as to costs.