

Goutam Sinha Vs. General Manager South Eastern Railway and Others

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Court : West Bengal State Consumer Disputes Redressal Commission SCDRC
Kolkata

Decided On : Jan-08-2013

Judge : The Honourable Mr. D. Bhattacharya, Member & the Honourable Mr. J. Bag, Member

Appeal No. : SC. Case No. FA/401 of 2012 (Arisen out of Order No. 25 dt. 15.6.12 of DCDRF, Kolkata, Unit-II in Case No. CDF/Unit-II/C.C.No. 36 of 2010)

Appellant : Goutam Sinha

Respondent : General Manager South Eastern Railway and Others

Judgement :

J. Bag, LD. Member

The present appeal is directed against the Order dated 15.06.2012 passed by the Ld. District Consumer Disputes Redressal Forum, Kolkata Unit II in their Consumer Case No. 36 of 2010, the Ld. Forum having dismissed the complaint on the ground of lack of territorial jurisdiction.

The appeal is presented with the facts as stated below :

The Appellant / Complainant on 02.08.2008 purchased a Journey -cum - Reservation Ticket (2 AC) for his own journey and also for journey of his daughter from Howrah to Bhubaneswar by Train No. 2895 Howrah-Puri Express on

10.10.2008, vide PNR No. 611877816 and another Journey-cum -Reservation Ticket Vide PNR No. 641551959 for return journey from Bhubaneswar to Howrah by Train No. 2074 Janasatabdi Express on 11.10.2008. Both the tickets were purchased from the NKG South Eastern Railway Head Office ticket counter at 14, Strand Road, Police Station, Hare Street, Kolkata -700 001 through ATM cum debit card. On the date of his Up - journey, that is, 10.10.2008 the Appellant/ Complainant after reaching Howrah Station heard through public address system announcement minutes before the scheduled departure of the train at 20.55 hrs that the train was cancelled. The Appellant/ Complainant had to make alternative arrangement at the last moment to reach their destination at Bhubaneswar. Again on the date of his return, that is, 11.10.2008 the Appellant / Complainant experienced the same thing as the Train No. 2074 Janasatabdi Express scheduled to leave Bhubaneswar at about 6 a.m. was cancelled by the O.P. / Respondent i.e., South Eastern Railway authority. No alternative arrangement was made by the Railway authority and as a result the Appellant/Complainant suffered mental and physical harassment and discomfort and was bound to purchase general class ticket for their journey from Bhubaneswar to Howrah.

The Appellant / Complainant demanded from the Opposite Parties / Respondent Nos. 3 and 4 refund of the Bank charges levied during purchase of ticket and also during refund of Ticket money. The Appellant /Complainant wrote to the O.P/Respondent No.2 alleging deficiency in service on the ground of cancellation of train. He also registered complaint with the General Manager, Andhra Bank. The cause of action against the O.P.s, who are located within the Hare Street Police Station, it has been stated, are all under the jurisdiction of the District Consumer Disputes Redressal Forum, Unit-II Kolkata. The Ld. District Forum after hearing the matter and having considered all submissions, passed an order dismissing the complaint on the ground of lack of territorial jurisdiction.

The Appellant /Complainant was aggrieved by and dissatisfied with the order and preferred the present appeal along with the copy of the impugned order, copy of the complaint petition filed before the Ld. Forum below together with all annexures thereto including copies of tickets for journey cum- reservation, letters dated 20.11.2008, 06.02.2009 and 27.05.2009 written by the complainant to the Railway

authority, copies of letters dated 23.6.2009 issued by the South Eastern Authority disposing of the prayer of the Complainant in regard to refund of fare against PNR No. 61178877816 and 6415561959, copy of letter dated 2.6.09 written by Asst. General Manager, Andhra Bank, Zonal Office Kolkata disposing of the letter of complaint dated 27.05.2009.

The appeal stands pointed mainly against dismissal of the complaint on the ground of lack of territorial jurisdiction and as such we concentrate on that point alone, the merit of the complaint lying apart.

The Ld. Forum appears to have taken for themselves a few questions as to whether the case was maintainable, whether the case was barred by limitation, whether the Complainant was a consumer, whether there was any deficiency in service on the part of the O.Ps, whether the Complainant was entitled to get the relief as sought for and whether the Forum had territorial jurisdiction to entertain the complaint case.

The Ld. Forum, while proceeding with the complaint, relied upon the decision reported in (2010) 3 WBLR (SC) 58 in the case of Sonic Surgical -Vs- National Insurance Company wherein it was held inter alia that cause of action means a bundle of facts which gives rise to a right or liability and further held, in the matter of dispute for disposal, that no part of cause of action arose in Chandigarh, that the Insurance Policy was taken at Ambala, that the claim for compensation was made at Ambala and that the fire broke out in the godown of the Appellant at Ambala, and accordingly the cause of action was to be referred to the SCDRC, Hariyana. The Ld. Forum observed that the cause of action in the case in hand arose at Howrah Station where the train was cancelled for its journey towards Bhubaneswar and ticket for return journey was also cancelled at Bhubaneswar, and, therefore, the cause of action for up-journey from Howrah and return journey from Bhubaneswar arose beyond their jurisdiction. It has further been observed by them that the Complainant chose the jurisdiction to institute the case where one of the Andhra Bank situates at 14 Ezra Street under P.S. Hare Street, but no cause of action or part thereof arose within the place of Ezra Street under P.S. Hare Street.

Decision with reasons :

We have gone through the appeal and other documents filed by the Appellant. Brief notes of argument as filed by the Complainant have also been perused.

Case law as cited by the Ld Advocate appearing for the Complainant / Appellant in reference to South Eastern Railway V. Bharti Arora, 2004 (8) CLD 387 (NC) = 2004 (1) CPJ 114 (NC) =2004 CLT 295 (NC) wherein it has been held by Honble National Commission that a complaint can be entertained by the Forum at the place where ticket was purchased (besides the Forum at the place where deficiency was caused), has been gone through.

A look at the relevant provision, i.e., Section 11 of The Consumer Protection Act 1986 reveals 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 institution of the complaint , actually or voluntarily resides , or carries on business or has a branch office, or personally works for gain ; or

(b) any of the opposite parties, where there are more than one, at the time of institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, 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 has a branch office, or personally works for gain, as the case may be, acquiesce in such institution ; or

(c) the cause of action, wholly or in part, arises.

In the present case both the OP /Respondent No.2, namely, The Chief Commercial Manager (Refunds), N.K. G. Building, 9th Floor, South Eastern Railway, 14 Strand Road, Kolkata 700001, P. S. Hare Street, who in response to the letter of the Complainant / Appellant dated 27.05.2009 replied that question of further refund does not arise and OP / Respondent No 3 , namely, The General

Manager Andhra Bank, 14 Ezra Street, Kolkata 700001 P. S. Hare Street carry on business within the jurisdiction of the Ld Forum below as pointed out by the Complainant / Appellant in his appeal / complaint petition. Refusal by the OP / Respondent No. 2 to meet the grievance of the complainant, particularly in relation to refund of service charges deducted towards cancellation of the journey-cum-reservation tickets and to pay other compensation as mentioned in the complainants letter dated 27. 05. 2009 surely gave rise to cause of action, although in part, as found to be in consistence with sub- Section 1/c of Section 11 of The Consumer Protection Act 1986.

We do not agree with the Ld. District Forum below that in the instant case they have no jurisdiction to adjudicate the matter of dispute. We are inclined to order that -

The appeal be and the same is allowed on contest . The matter be remanded to the Ld. Forum below for fresh adjudication of the complaint. The impugned order is set aside. There shall be no order as to cost.

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