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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Jun-27-2011

Judge : Honourable Thiru Justice M. Thanikachalam President & Tmt. Vasugi Ramanan Member II

Appeal No. : F.A.NO.9/2009 (Against order in CC.NO.73/2005 on the file of the DCDRF, Chennai (North))

Appellant : Arvind V. Joshi and Others

Respondent : M/S. Ram Mohan and Co. Pvt. Ltd. and Another

Judgement :

The appellant as complainant filed a complaint before the District Forum against the opposite party praying for the direction to the opposite party to pay Rs.1,31,649/-. The District Forum dismissed the complaint. Against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.21.07.2008 in CC.No.75/2005.

This petition coming before us for hearing finally on 27.06.2011. Upon hearing the arguments of the counsel on both sides, perusing the documents, lower court records, and the order passed by the District Forum, this commission made the

following order:

M. THANIKACHALAM .J, PRESIDENT

1. The complainants are the appellants.

2. Brief facts:

The complainants / appellants, being the family members, have booked air tickets, in the 2nd opposite party airlines, through the 1st opposite party, their recognized agent, for travel on 17.9.2004, from Belgaum, via Bangalore to Chennai, by flight No.DN 205, and Bangalore to Chennai by flight No.DN 121, in order to celebrate Vinayagar Chathurthi pooja on 18.9.2004, in the house at Chennai. As scheduled, when they reached Belgaum airport at 6.30 a.m., on 17.9.2004, to their surprise and shock, they were informed, that Belgaum flight has been cancelled, advising to get the refund value of air ticket, from their agent, i.e., the 1st opposite party at Chennai.

3. The request of the complainants to make arrangements by accommodating in any one of the flights, operated by the 2nd opposite party to Chennai, not conceded, and they have also previously not informed to the passengers, regarding the cancellation. The sudden cancellation, without advance information, and not-making alternative arrangement for the confirmed tickets, should be construed as not only as negligent act, but also as deficiency in service. Because of the deficiency in service, committed by the opposite parties, the complainants were compelled to go to railway station, constrained to purchase tickets, incurring expenses, thereby they have put to mental agony, depression etc., incurring additional expenses also, for which the opposite parties are liable.

4. The 1st opposite party arbitrarily deducted a sum of Rs.452/- towards transaction fee, which they are entitled, and for the delay of refund also, the complainants are entitled to interest. Claiming compensation, notice was issued dt.21.11.2004, for which neither there was reply, nor compliance, thereby the complainants are constrained to file the case to recover a sum of Rs.1,31,649/- in all.

5. The opposite party, admitting the booking of tickets, by the complainant, from Belgaum to Chennai, via Bangalore, opposed the claim contending that due to technical reasons, the flight was cancelled, which was informed to all the passengers viz. 18, booked their ticket for flight on 17th September, through their call centre, and therefore it is incorrect to say that the 2nd opposite party, announced the cancellation of the flight, surprisingly on the arrival of the complainant at Belgaum airport, that the 2nd opposite party, refunded the amount to the 1st opposite party, who in turn refunded the amount to the complainant, which was received without any protest, and as such the opposite parties have not committed any deficiency, that too in not providing alternative accommodation, since their air service was the low cost operation in India, committed to provide service to all, thereby praying for the dismissal of the complaint, denying other averments also.

6. The District Forum, by its order dt.21.7.2008, recorded a finding that the cancellation of flight was informed through the call centre, even on 16.9.2004, that as per the terms and conditions available in the air ticket itself, refund was given, and in the conduct of the opposite parties, there was no deficiency of service, thus concluding, the complaint was dismissed, which is impugned once again, seeking redressal before us.

7. It is the common case of the parties, that the complainants have booked their travel ticket, in the 2nd opposite party airlines on 17.9.2004, through the 1st opposite party, even on 6.8.2004 itself, confirming the schedule. On 17.9.2004, when the complainants came to Belgaum airport, according to the complainants, they were informed at the airport alone, regarding the cancellation of the flight, thereby delaying their journey, not only that, but also compelling them to travel by train, taking tickets at 11th hour, thus creating tension, torture, travel expenses etc., It is also an admitted fact, after 10 days or so, the 1st opposite party refunded the amount, less transaction fee, which was acknowledged by one of the complainants, without any protest, as seen from Ex.A7. After receiving the amount, the complainants expressing their experience, hardship suffered, claimed compensation, including the refund of the deducted portion, alongwith other travel expenses, declined or not complied with, resulting consumer complaint, ending in

failure. In this context, we have to see, what are the conditions available in the air ticket, which should be taken as the binding terms and conditions of the contract, between the parties.

8. The airlines may be compelled to cancel their flight, due to technical reasons, beyond their control, and therefore mere cancellation of a flight, that too low cost operation of flight, like the 2nd opposite party, cannot be perse faulted. In this case, the flight which was to commence its journey on 17.9.2004, cancelled due to technical defense, as urged before us, which is not very much under challenge. Therefore, for the cancellation of the flight by the 2nd opposite party, we cannot find fault, but it is the duty of the airlines to inform in advance to the passengers, to have their alternative accommodation thereby not causing inconvenience, and if possible, providing alternative travel arrangement also. In this case, the opposite parties have not undertaken, to provide alternative flight, since the scheduled flight itself was not able to be operated, because of some technicalities. Therefore, the non-providing of alternative flight, or accommodation in anyother flight, since it is not made out by the complainant, that they have operated the same on the same day, may not be faulted or considered as deficiency in service. If at all, the non-information if any can be faulted. That is., also one of the deficiency in service, alleged in the complaint.

9. At the time of the booking the travelers are required to furnish their contact numbers, and the purpose is to contact them, incase of emergency like cancellation of flight etc. In this case, the complainants have given their land line number at Chennai, though they have planned to travel from Belgaum to Chennai, via Bangalore. It is not the case of the complainants, that they have given Belgaum number, or any mobile number, to have easy access by the call centre. Therefore, when the 2nd opposite party had decided to cancel the flight, even on 16th September 2004, due to technical reasons, they have informed their call centre, requesting them to inturn inform to all the passengers, who have given their contact number. Accordingly, as seen from Ex.B1, the call centre had informed the cancellation of the flight on 16.9.2004 itself, though it was Madras number, since they had no other number, to contact the complainants. If at all the Madras number, who received the information, ought to have informed the

complainant, and that for failure, the opposite parties cannot be made responsible. The information found in Ex.B1 communication, is not proved to be false, in our view, it must be correct. The complainants have not given their mobile number, or Belgaum number, thus we conclude, it is not a case of sudden cancellation of the flight on 17.9.2004, and even prior to that, i.e., on 16.9.2004, itself information was given to the passengers, including the complainants, which could not be reached, because they have not provided the alternative phone number.

10. The complainants, unfortunately, probably not informed, by Madras member landed at Belgaum airport, and they came to know about the cancellation only there, for which we cannot affix the label of deficiency of service. At the airport they were informed about the cancellation, endorsement also made in the tickets, to refund the amount, requesting the passengers to approach their booking agent, for getting refund. In this way, as we have already adverted to above under Ex.A7, payments were made, received without protest, and therefore, it is not open to the complainant to say now, they are entitled to more amount, or the opposite party had deducted arbitrarily the amount due to them, especially the 2nd opposite party is concerned, since the 2nd opposite party had advised the 1st opposite party, to refund the entire amount. In this context, we have to see the conditions available in the ticket also.

11. In the ticket, under the heading delays/ cancellation, and changes in schedule it is specifically stated that the carrier may without notice, cancel or delay a flight, due to various reasons, as enumerated therein and one of the reasons is mechanical failure, which will come within the meaning of technical reasons. Therefore, as per the terms and conditions also, the carrier is entitled to cancel the flight, since they cannot take the risk of the passenger, when the aircraft, is not fit for flying as per the standard. The District Forum, considering the above said terms and conditions, available in the ticket, as well as relying upon certain rulings of the State Commissions, has come to an unerring conclusion, that the cancellation was due to technical reasons, and as such there was no deficiency of service, and since the complainant had already got refund of the amount, is not entitled to any relief, which finding we endorse, unhesitatingly, thereby concluding the appeal is devoid of merits.

12. In the result, the appeal is dismissed, confirming the order of the District Forum n O.P.No.73/2005 dt.21.7.2008. There will be no order as to cost throughout.

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