

(2003) 09 NCDRC CK 0054

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Hameed

APPELLANT

Vs

INDO ARAB TRAVELS

RESPONDENT

Date of Decision: Sept. 22, 2003

Citation: 2004 4 CPJ 215 : 2005 1 CPR 239

Hon'ble Judges: T.M.Hassan Pillai , R.Vijayakrishnan , A.Radha J.

Advocate: T.V.Ashraf , C.K.Aravindaksha Menon , A.Abdul Kharim , Prakash P.George

Judgement

1. THE complainant Mr. Hameed, a prospective passenger, approached 1st opposite party, requesting to confirmed tickets for his to and fro journey from Mumbai to Dubai and 1st opposite party offered confirmed ticket for the proposed journey on 21.8.2000 flight. Relying on the said assurance he purchased a ticket from 2nd opposite party to Dubai by 7.30 p.m. flight scheduled on 21.8.2000. On 21.8.2000 complainant reached the Mumbai Airport, but to his utter disappointment he had been denied boarding on the ground of over booking. THEN he approached 2nd opposite party who in turn assured accommodation in the 19.00 hrs. flight. Again accommodation in the flight was denied. When he raised protest, concerned Airport Authority undertook to accommodate him in another flight scheduled to depart at 11.30 p.m. But contrary to the promise 2nd opposite party expressed their inability to accommodate the complainant for the very same reason as stated earlier, i.e., over booking. It is prayed that a direction may be given to the opposite parties to pay a sum of Rs. 8 lakhs and other reliefs for the hardship and injury occasioned to the complainant due to the negligence, deficiency in service and unfair trade practice on the part of opposite parties.

2. THE complaint is resisted by the opposite parties. In the written version filed on behalf of 1st opposite party Indo Arab Travels, it is admitted that they are authorised to deal with air tickets of various airlines including (sic). But date, time and flight is not done by them but by the parties and in this case also the complainant has fixed the date and time of journey. THEy denied all other allegations made by the complainant and contended that it is impossible for them to issue an OK ticket. For this purpose they are solely depending on the information given by the 2nd opposite party, 2nd and 3rd opposite parties are the authorities to decide whether OK tickets are available in a particular flight. Complaint is liable to be dismissed.

Opposite parties 2 and 3 entered appearance and 3rd opposite party filed version and affidavit raising a preliminary objection that the contract of carriage of the complainant was from Mumbai to Dubai. The ticket is seen purchased from the 1st opposite party in Mumbai and the alleged denial of boarding was also occasioned in Mumbai Airport. No part of the cause of action arose in the State of Kerala.

So it is necessary to consider the question of maintainability of the complaint as a preliminary issue

3. WE heard the learned Counsels for the complainant and the 3rd opposite parties.

Narration of the complainant, in the complaint revealed that the 1st opposite party is known to be the authorised travel agent of 2nd opposite party and the 3rd opposite party is the Zonol Office situated at Kerala. The 2nd opposite party carries on business in the State of Kerala. Further case of the complainant is that he had approached the 1st opposite party for confirm ticket, the journey from Mumbai to Dubai, when he reached Mumbai Airport in time he had been denied boarding, 2nd opposite party had then given an assurance to the complainant that complainant will be given a seat in 19.00 hrs. flight but again denied accommodation.

4. THE above narration clearly discloses that the journey was from Mumbai and all transactions like booking of ticket, denial of boarding took place at Mumbai and all the allegations are against 1st and 2nd opposite parties which are located at Mumbai. No specific allegation is made against 3rd opposite party and 3rd opposite

party is not in any way connected with the alleged transactions, 3rd opposite party is only the Zonal Office of 2nd opposite party.

The primary and vital question for consideration is as to whether this Commission has jurisdiction to entertain the complaint.

Our attention has been drawn by the 3rd opposite party to judgment delivered by the Hon"ble Supreme Court in Union Bank of India v. Deppo Rally OY, VII (1999) SLT 633=1999 8 SCC 357, wherein it was observed that "Under Section 17 of the Act State Commission has jurisdiction to decide complaints of the value between rupees five and twenty lakhs but there is no such provision as contained in Sub-section (2) of Section 11 of the Act applicable to the State Commission. Apex Court observed further :

"We have to have purposive interpretation of the provisions and we have to hold that similar provisions as contained in Sub-section (2) of Section 11 with modifications as may be necessary shall be applicable to the State Commission."

5. HON"ble Supreme Court held that since no part of cause of action has arisen in Delhi "It is difficult to agree that the State Commission of Delhi had jurisdiction in the matter".

6. IN the light of principle of law enunciated by the Supreme Court in Union Bank of INdia case (supra) it has to be held that this Commission has no territorial jurisdiction to entertain this complaint on the ground no part of cause of action had arisen in Kerala.

Learned Counsel for complainant, submitted that the Supreme Court laid down the dictum in an altogether different context and the legal proportion laid down is not applicable to the facts of the case in hand. He submitted that the ground and circumstances are entirely different.

D opposite party has Drawn our attention to a Decision of this Commission in a complaint against Oman Airways on IA 1531/2001 in O.P. 60/2000 DateD 15.1.2003. In this case the complaint was fileD against Oman Air for loss of baggage while complainant was travelling from JiDDah to Mumbai. This Commission relying on the

Decision rendered by the Hon"ble Supreme Court in Union Bank of India case (supra) held that this Commission has no jurisdiction to entertain the complaints.

7. IN view of the principle laid down by this Commission as referred above we decline to exercise our jurisdiction to entertain the complaint on the ground that no part of cause of action has arisen within the jurisdiction of this Commission.

We uphold the preliminary objection raised by the 3rd opposite party that this Commission has no territorial jurisdiction to entertain this complaint. Hence complaint is ordered to be returned. No order as to costs. Complaint returned.