

AIR DECCAN DECCAN AVIATION LTD Vs AJAY GOEL

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: May 7, 2008

Citation: 2008 2 CPJ 515

Hon'ble Judges: J.D.Kapoor , Rumnita Mittal J.

Final Decision: Appeal dismissed

Judgement

1. ON the allegation of having cancelled the ticket 6 days before the date of departure which was booked about 6 months in advance on a false

representation that the flights were not operational from 1st May to 31st May, 2007 from Bombay to Delhi, the appellant has been held guilty for

deficiency in service and unfair conduct and directed to pay Rs. 25,000 as compensation and cost. Feeling aggrieved the appellant has preferred

this appeal.

2. THE allegations of the respondent leading to the impugned order, in brief, were that under promotional fare scheme of which the basic fare was

less than Rs. 300, respondent booked return air ticket with the appellant for himself and two of his relative passengers Mr. Basant Garg and

Saurabh Garg from Airlines Website from his residence at Mansarover Garden on 12. 11. 2006 i. e. about 6 months in advance from 3. 5. 2007

and returning on 6. 5. 2007. On 26. 4. 07, respondent received call from Bangalore i. e. merely 6 days before the date of departure that their

return ticket is cancelled by them at 6 p. m. due to following reasons:

(i) Their computer updating process/error. (ii) Flight cancelled/withdrawn by them.

Respondent told the said person giving call from Bangalore to give it and his co-passengers the same day another time flight ticket i. e. early or

after the scheduled departure ticket without taking extra fare difference. On this, person from Bangalore told that flight was not operational from 1.

5. 2007 to 31. 5. 2007 from Bombay to Delhi and respondent would after deduction of Rs. 150 as transaction fee will be refunded to his credit

card account. A copy of the Bank statement was enclosed with the complaint by the respondent.

Respondent having doubt about the appellant's intimation received from Bangalore, on the next day checked on site regarding departure from

Bombay to Delhi and found that flights were quite operation and appellant could adjust the earlier or after the scheduled departure. On being called

again on the same day on their customer care number, appellant refused to adjust them for that and told that their PNR No. has also been

changed. On respondent's request to cancel his Delhi to Bombay flight, appellant told him that they would refund only total of Rs. 675 i. e. Rs.

225 per passenger, if he opted for that. Later on respondent came to know that flight Air Deccan had booked costly go air flight ticket for return

journey instead of Air Deccan Flight for which ticket cost them Rs. 7,650. With the above grievance, respondent approached this Forum for the

relief as claimed in the prayer clause of the complaint.

3. WHILE justifying the cancellation of the flight for non-operation of the flights from Bombay to Delhi, the appellant has relied upon the terms and

conditions agreed between the parties as to the delays, cancellation and changes in schedule which are as under: ""in case of circumstances beyond

its control (including, but without limitation, meteorological conditions, mechanic failure, acts of nature, force majeure, strikes, riots, civil

commotions, embargoes, wars hostilities, disturbances, Government Regulations, orders, demands or requirements, shortage of labour, fuel or

facilities or labour difficulties of carrier or others all actual, threatened or reported) Carrier may without notice cancel or delay a flight.

The perusal of the impugned order shows that in the written statement or the affidavit of one Sh. Navodit Mehra, Head Legal of the appellant, no

such eventuality was referred to except making a vague averment that the flight was withdrawn due to operational reasons which were beyond the

control of appellant Airlines.

4. THE contention of the Counsel for the appellant that the respondent had on his own cancelled the flight does not inspire confidence at all in view

of the serious allegations against the conduct and unfair trade practice of the appellant. Moreover, no material was produced by the appellant to

show that the ticket was got cancelled by the respondent himself.

The terms and conditions relied upon by the appellant specifically provide that the flights can be delayed or cancelled or rescheduled only in those

circumstances which are beyond its control which ordinarily means due to acts of nature or force majeure. However, other circumstances under

which the delay or cancellation or change in the schedule is permissible are meteorological conditions, mechanic failure, strikes, riots, civil

commotions, embargoes, war hostilities, disturbances, Govt. Regulations, orders, demands or requirements, shortage of labour, fuel or facilities or

labour difficulties of carrier or others all actual, threatened or reported. In the instant case not a single circumstance, as referred above, existed for

cancellation of flight. Whenever any service provider wants to take advantage of the circumstances permitting him to delay the flight or cancel the

flight or change the schedule of the flight, the onus is heavily upon the service provider to prove that the cause for delay or cancellation or changing

the schedule of the flight was one of those as prescribed under the terms and conditions. Otherwise the parties are bound by the terms and

conditions of the agreement.

Merely by pleading that the circumstances were beyond the control does not mean and prove that circumstances were really beyond their control.

In case after case we have held that the often-taken excuse of technical snag or mechanical failure without any proof or meteorological conditions

without any material are stereotype lame excuses and are not available as these grounds are either man made or due to poor quality or maintained

of the fleet or poor management of the affairs of the Airlines.

5. SERVICE providers like Airlines little realize that their inefficiency of casual or cavalier attitude towards the passengers causes immense mental

agony, harassment, emotional suffering, trauma, physical discomfort to the passengers at large as they are left stranded for hours together without

any food or eatables and when the consumers ask for refund of the cancelled flight or changed flight, they make him run from pillar to post and offer

him half of the price of the ticket. No service provider can be allowed to usurp the consideration received by it in case it has either not provided

the service or the consumer has not availed the service. Any such term of contract allowing the service provider to forfeit or recover the charges is

unconscionable terms of contract and therefore void ab initio.

6. IN the instant case the excuse that the flights were not operational from 1st May to 31st May, 2007 from Bombay to Delhi was as on

verification on 27th April, 2007 from the check on site was found to be untrue as the flights were quite operational and therefore the allegation of

the respondent that the appellant was accentuated by greed booked costly go air flight for return journey by cancelling Air Deccan flight for which

ticket cost them Rs. 7,650.

On the concept of compensating a consumer as to the unfair trade practice or deficiency in service, the Supreme Court has given a wide

connotation to the word "compensation" appearing in the provisions of Section 14 of the Consumer Protection Act by taking in its fold each and

every element of suffering i. e. mental agony, harassment, emotional trauma, physical discomfort, insult, humiliation. These elements have been

included to vindicate the strength of law and act as deterrent for those service providers and traders who do not learn and continue in indulging in

such practices. The observations of Supreme Court made in Ghaziabad Development Authority v. Balbir Singh, II (2004) CPJ 12 (SC)=iii (2004)

SLT 161= (2004) 5 SCC 65, are quote worthy and are as under:

the word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical,

mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and

empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but

also to compensate a consumer for injustice suffered by him. The Commission/ Forum must determine that such sufferance is due to mala fide or

capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to

misfeasance in public office by the officers. Such compensation is for vindicating the strength of law.

This is a case where the consumer has been awarded only compensation of Rs. 25,000 which we do not feel inclined to interfere with. However,

the appeal being highly misconceived and misdirected is dismissed with cost of Rs. 25,000 which shall be deposited in favour of "state Consumer

Welfare Fund (Legal Aid)" established by this Commission for providing legal service free of charge to the poor consumers who suffer at the hands

of rich and mighty organizations and powerful business houses who have the means to engage services of senior lawyers whereas the consumer

who does not have mean even to engage lawyer who may charge fees of Rs. 5,000 or so.

7. THE appeal is dismissed.

The impugned order shall be complied with within one month from the date of receipt of this order.

8. BANK Guarantee/fdr, if any furnished by the appellant, be returned forthwith.

A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and

thereafter the file be consigned to Record room. Appeal dismissed.