

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

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ADVANTAGE - X

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Continued from previous issue..

British Airways and Lufthansa German Airlines penalised for their lack of diligence, which resulted in the physical and mental ordeal of its passenger.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 366 OF 2020

(Against the Order dated 29/01/2020 in Complaint No. 95/2019 of the State Commission Chandigarh)

BRITISH AIRWAYS

DLF PLAZA TOWER, PHASE-I, DLF CITY, BLOCK-B, SECTOR-
26-A, SIKANDERPUR GHOSH, GURGAON-122002. HARYANA

.....Appellant(s)

Versus

HARSHARN KAUR DHALIWAL & 3 ORS.

W/O. PARAMJEET SINGH DHALIWAL, R/O. HOUSE NO. 2254,
SECTOR-35-C,

CHANDIGARH-160022

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

Dated : 16 Jan 2023

ORDER

16. ..from its mobile call record which it has placed on record. Submission is that though it is pained with the pain of its customer but it cannot be saddled with liability of compensation which can only be apportioned on the two remiss airlines who are the actual culprits.

17. Learned counsel for the Complainant submits that the Complainant was put to loss and injury due to the deficiency and the unfair trade practice on the part of both the concerned airlines, British Airlines and Lufthansa German Airlines.

At San Francisco the Complainant was first made to sit inside Lufthansa German Airlines flight LH-455 scheduled for Frankfurt for about three hours. She was then de-boarded without any reason told which was virtually an uncouth defenestration.

She was not given the option of refund.

Without consulting with her in any manner or checking from her regarding the visas she possessed she was unilaterally re-routed from San Francisco to New Delhi via London and Copenhagen on British Airways and Air India flights.

Neither wheel-chair assistance, nor the required diet suited to her health and medical conditions, nor even water was made available to her though the Complainant was a senior citizen with many age-related diseases.

Complainant being a responsible and law-abiding person had duly ensured that she was compliant with the visa requirements of the countries she had to transit in change-over as well as the country of destination before undertaking her journey as per her original travel itinerary and ticketing. The re-routing on the return trip was done unilaterally without in any manner consulting her or ascertaining as to which visas she possessed.

Submission is that it is tellingly obvious that when an airlines is re-routing a passenger the onus is on the airlines to ensure that it routes the passenger through countries with whose visa requirements the passenger is compliant with. Learned counsel argues that it is totally illogical and absurd to attempt putting the blame on this count on a passenger who is thus re-routed.

Learned counsel further submits that the Complainant was detained at Copenhagen since she did not have a transit or tourist visa for Denmark. She was confined and Police watch and guard was kept over her. No official from either of the airlines, Lufthansa German Airlines and the British Airways, was available at Copenhagen to sort out the problem even though it was their own creation. Learned counsel submits that a passenger has no concern with the working arrangement between the two airlines *inter se*. As far as the Complainant is concerned, both Lufthansa German Airlines, whose ticket she originally held and who undertook the re-routing at San Francisco under its working arrangement with British Airways, and British Airways, on whose flight she was put on and who made a change in her flight at London, were responsible for causing her visa-related detention at Copenhagen. If either of them has a case against the other, it does not concern the Complainant.

Learned counsel submits that pertinently none of these airlines who are now passing the buck on each other have shown any material as may show that either of them had taken up the matter with the other. Nor either of them has individually undertaken any fact-finding inquiry. Submission is that without any fact-finding inquiry, keeping complete opacity and lack of accountability, without empathy towards the Complainant, with complete disregard to the curtailment of her very liberty itself, her detention, the insult, the humiliation and the mental agony and the physical harassment she suffered, the case is being inhumanly and mechanically defended by anyhow making untenable defences and irrational arguments. Though both airlines are squarely liable, the each is trying to blame the other rather than fairly admitting their mistakes and coming clean up-front. No submission of regret or apology is being made. The indefensible is being defended.

Submission is that both airlines are liable for deficiency and unfair trade practice and further that in addition to compensation to the Complainant the two airlines ought to be directed to inculcate systemic improvements for future so that such instances do not recur with passengers at large.

Regarding Surya Travels & Associates learned counsel however concedes that, though it had not cooperated with the Complainant's husband and had been remiss in sorting out the problem at Copenhagen, but seeing that the actual culprits who caused the problem were the two airlines and considering that Surya Travels & Associates was just the travel agent, the Complainant does not wish to press her case against Surya Travels & Associates for compensation but strongly presses it against the two airlines.

Regarding the quantum of compensation, learned counsel submits that the State Commission has awarded total compensation of Rs. 70 lakhs but the Complainant wishes to seek the amount of Rs. 80 lakhs with interest at the rate of 12% per annum from the date of suffering i.e., 19.03.2018 till payment along with Rs. 2,00,000/- towards litigation cost, as was claimed by her in her complaint. He further submits that as the compensation of Rs. 5 lakhs awarded against Surya Travels & Associates is not being pressed, the total compensation from the two airlines may be curtailed to Rs. 75 lakhs.

18. We may first observe that the State Commission appears to have passed a well-appraised and reasoned Order and has aptly dealt with the issues germane to the matter in arriving at its findings of deficiency and unfair trade practice on the part of the two airlines, Lufthansa German Airlines and British Airways.

The Complainant was made to sit in Lufthansa German Airlines flight LH-455 at San Francisco for about three hours before being made to de-board with no reason told. She was not offered the option of refund. She was unilaterally re-routed. Visa requirements of the country(ies) of transit i.e., change-over were not checked or ascertained. That the connecting flights during changeovers will be smoothly boarded was not kept in sight. The British Airways flight BA-286 from San Francisco to London was delayed. By the time it arrived at London, the connecting flight BA-820 from London to Copenhagen had already departed. The later flight BA-822 did not enable her to catch the next flight of Air India AI-158 from Copenhagen to New Delhi since it had departed by the time BA-822 arrived at Copenhagen.

Though her initial itinerary was from San Francisco to New Delhi via Frankfurt, she was re-routed from San Francisco to New Delhi via London and Copenhagen and ultimately reached New Delhi via London and Copenhagen and Istanbul. In between she was detained in Copenhagen for considerable period throughout the night and early morning under the watch and guard of the Police for not being compliant with the visa requirements of Denmark.

Disconcertingly enough wheel-chair assistance, diet suited to her health and medical conditions, and even water was not provided.

When the problem occurred at Copenhagen, where she was detained, kept under hovering Police watch and guard, no official of either airlines ever bothered or made himself available to salvage, mitigate or sort out the doings of their creation.

19. An argument that an airlines owes the duty of visa compliance only to the country of destination and not to the passenger *per se* is bereft of any worth or merit in the present facts and circumstances. No doubt a passenger is required to show diligence at her end and ensure that she has the requisite visas for the countries of transit and destination. In the present case the Complainant had shown the diligence. She was compliant with the visa requirements of Switzerland, Germany and United States of America, as per her original travel plans and ticketing. It is absurd to suggest that the passenger has to again check the visa requirements of any other country or countries while waiting at the airport if she is being re-routed by the airlines itself whose very business is travel transport and who is required and expected to be aware of visa and allied requirements of the countries where it provides its services to. Particularly so when the re-routing is done *suo motu* without even consulting the passenger far less than checking or ascertaining from her regarding the visas she possesses.

20. An argument that the detention took place since the connecting flight of Air India AI-158 had already departed and the Complainant could not show how she would be existing the country is also totally bereft of any worthwhile substance. The principal duty in re-routing is to check and ensure that the passenger is compliant with the visa requirements of the countries of transit in change-over, and this duty is of the airlines which is undertaking the re-routing. An allied but significant aspect remains that the re-routing be done in a manner that the passenger is able to catch the connecting flights, and in case of delay, if a passenger is put on a later flight, it be concomitantly confirmed that the passenger will be able to catch the next connecting flight.

21. In the present case visa requirements of the country of transit were not checked and ensured during re-routing. The Complainant was detained at Copenhagen for a considerable period throughout the night and early morning due to non-compliance of visa requirements,

which was certainly nightmarish for the elderly lone lady.

No attempts to fix responsibility and accountability or to imbibe systemic improvement for future were ever made by either airlines. And no regret or apology at all.

22. British Airways cannot be suffered to wriggle out from its admission of “mistake” at London in not checking the visa requirements at the time of putting the Complainant from London to Copenhagen on its later flight.

Additionally, British Airways, while putting the Complainant from London to Copenhagen on a later flight ought to have also checked to ensure that the Complainant would be able to catch her next connecting flight of Air India AI-158 from Copenhagen to New Delhi. But in this too it was remiss.

Regarding the submission that the onus of checking and ensuring visa compliance while re-routing at San Francisco was on Lufthansa German Airlines alone, which undertook the re-routing, no material has been placed on record to show that it had ever raised or taken up this matter with Lufthansa German Airlines.

British Airways cannot escape its liability since it was its flight the Complainant was put on at San Francisco and the Complainant had no concern with the mutual working arrangement between British Airways and Lufthansa German Airlines.

23. Lufthansa German Airlines accepts that it did not examine visa requirements at the time of re-routing.

Regarding the submission that the detention was not due to non-fulfilment of visa requirements but since the next connecting Air India flight AI-158 had departed and the Complainant could therefore not show the means of exit, no material has been placed on record that it had ever taken up this matter with the authorities at Copenhagen. Pertinently no inquiry howsoever cursory was ever conducted. As such this is a hypothetical conjecture based on misplaced premises, nothing else.

Unarguably the ticket was originally of Lufthansa German Airlines. The Complainant was first made to sit for over three hours in its flight which was then cancelled. The flight is told to have been cancelled due to “technical issues”. There is opacity on the actual issue *per se*, whether it was a genuine reason or was some mis accounted carelessness etc. It undertook the re-routing at San Francisco. No fact-finding inquiry was ever made.

It too cannot escape its liability.

24. The case against Surya Travels & Associates needs no further examination in the light of the submission made by the learned counsel for the Complainant that it does not wish to press for compensation against the travel agent but seeks it only against the main actual culprits i.e., the two airlines.

25. Regarding the quantum of compensation, it may be observed that in various situations where the consumer is not given a fair deal and where he is made to suffer by the service provider by being deficient in service or by resorting to some unfair trade practice, the eventuality of such plight has been adequately taken care of by the legislation and in order to redress his grievance statutory provisions have been enacted. Sections 14 of the Act 1986 contemplates to provide compensation for the loss or injury that may be suffered by such consumer and grant even punitive damages in appropriate cases where it is deemed fit. The legislature in its wisdom has not laid down any specific method fixed in nature or any specific manner in which the loss or injury suffered by a given consumer may be quantified. It also does not provide any rigid or fixed methodology by which the grievance of a consumer may be compensated and the damages for the same may be quantified. It is not even otherwise feasible to find or provide any cut-and-dried formula of universal application or to lay down any straight-jacket guidelines with absolute objectivity in order to estimate the loss

or injury suffered by a consumer or the amount of compensation which may be mathematically equal to the loss or injury suffered with objective exactitude. The facts of each case vary and so shall vary the myriad factual and legal nuances of each transaction that may take place between consumer and the service provider. There may be cases where the circumstances of a consumer, the extent of his travails, the degree of his predicament or the enormity of his loss or injury may be such that the same may persuade the concerned authority, judicial or *quasi*-judicial as it may be, to stringently discountenance the deficiency or unfairness & deceptiveness of the service provider and put it to strict terms and lean ungrudgingly towards the suffering consumer in order to provide him compensatory anodyne of justice. Similarly, on the other hand, there may be cases where the service provider may successfully demonstrate the circumstances which may go to mitigate its guilt or to extenuate the degree of its liability. It may in such cases successfully display its *bonafides*, its diligence, its sincerity in providing service and the fairness of its trade practice. The service provider may in such cases show circumstances and prove that the loss suffered by the consumer is not the consequence of its doing or that the degree or the extent of its liability is not so enormous as may call for escalated degree of damages or compensation. As the facts of each case may naturally vary infinitely, it is eventually for the concerned judicial or *quasi*-judicial forum to make a dispassionate assessment of the whole situation and to approach each case with a non-partisan attitude without prejudice or predilection so that it may strike the chord of balance and may do conscionable justice within the perimeters of law. At times, lump sum amount of compensation for the loss or injury suffered by the consumer is provided and a specific quantified amount is ordered to be paid. It is for the reason of variance of circumstances of each case that the amount of compensation to be fixed by the forums may keep varying from case to case. No rule-of-thumb is possible to be adopted for all times or for all cases. The different forums while discharging their judicial or *quasi*-judicial functions can neither afford to be oversensitive while assessing the grievance of the consumer nor can they be found reluctant in providing just and appropriate compensation commensurate with the loss or injury suffered or in awarding condign damages wherever called for. They cannot allow themselves to either become instruments of converting the solemn provisions of the Act into means of exploitation of service providers in the name of consumer justice or to ever disregard the plight of the aggrieved consumer with apathy or indifference. The forums have to be unfailingly judicious and try to meet the scales of equity in each case having regard to its particular facts & circumstances and specificities.

26. Reverting to the facts of the case at hand, we feel that the whole situation, from being made to sit in an aircraft for about three hours, then being made to de-board without reason told, then unilaterally re-routed without option of refund, then the re-scheduled flight being delayed, then being put on a later flight which reached when the next connecting flight had already departed, the flagrant omission of checking and ensuring visa requirements of the countries of transit in change-over, the consequential detention and curtailment of liberty and the inflicted insult, humiliation, mental agony and physical harassment, non-availability of officials at Copenhagen to salvage or sort out the problem, not providing wheel-chair assistance, suitable diet or even drinking water more so when the Complainant was a senior citizen with many age-related diseases, the absence of any fact-finding inquiry by either airlines, the absence of any *inter se* communication or communication with the authorities at Copenhagen, the opacity in operations and functioning even in aspects directly related to the Complainant, no regret or apology, all this, taken together, has to be holistically seen while awarding compensation.

We may also observe that liberty is the very essence of human existence. Its curtailment, even if for a “very short” duration, with the concomitant stigmatic insult as well as the depthless fear of further legal consequences, and that too for no fault or act attributable to the person being detained, cannot be treated as a simple matter of no particular significance, the injury suffered needs to be seen as what it actually is.

The human rights to dignity and personal liberty, which include freedom from physical restraint or coercion, are the hallmarks of the civilized society and have to be zealously guarded. They are inalienable and irrefragable rights and cannot be rendered illusory out of sheer apathy or negligence of a service provider. Nor can they be trampled over in any part of the globe where the rule of law prevails. If the deficient and unfair act of someone leads to any serious impairment of these arch values of our life it has to be reprovved and the institutions in charge of dispensing justice must hurry up to rescue and cry a halt. **To be continued...**

From the Chief Mentor's desk.....

Department of Consumer Affairs, Govt. of India, in the interest of spreading consumer awareness has embarked on a project to produce and circulate consumer awareness videos, every week, commencing from 11/08/2023, through Google Drive. The link for accessing the consumer awareness videos have been provided in our website www.advantageconsumer.com. Watch the videos and share it, in larger interests.

Quite often, we share interesting information, jokes, memes, etc. in our WhatsApp groups. Everyone is a consumer and we do keep hearing individuals lamenting about the quality of products or services or even excess charging. These educative videos provide simple and useful information, which can come handy to those who are in need. Festival season has started and there is likely to be a need for such information, for those who are affected. I am sure; you will do your bit to empower your friends and relatives, who too are consumers.

I do receive complaints about deficient service, etc. While some companies resolve the issues over the phone or chat service, some could be activated only through emails. I have found that the most popular e-commerce web portals like Amazon, Flipkart and big basket, do resolve the issues through "chat", email, and phone. But one has to keep in mind that he has to allow some time for the resolution. Invariably, they do resolve instantly or within 24 hrs. or a suitable timeframe, as per Company policy. So, one has to await suitable action, failing which he can take up the issue through an appropriate forum.

Wishing you happy festivals and shopping!!

B.Vaidyanathan

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of " **Consumer Protection Council, Rourkela**".

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