

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**Dated this the 3rd day of July 2023**

Filed on: 30/08/2018

PRESENT

Shri.D.B.Binu
Shri.V.Ramachandran
Smt.Sreevidhia.T.N

President
Member
Member

C.C. 352/2018**COMPLAINANT**

Bechu Kurian Thomas, S/o. K.T Thomas, Thadathil, 20/512 A.Yacht Club Enclave, Konthuruthy, Cochin 682 013.

(By Adv.Paul Jacob, Floor D, Lipids House, Plot G-285, Main Avenue, Panampilly Nagar, Cochin-36)

VS**OPPOSITE PARTIES**

1. Qatar Airways, Office No. 801, 8 Floor, Narain Manzil, 28 Barakhamba Road, Connaught Lane, New Delhi-110001 Represented by its Head India Operations) Sri Naveen Chawla,
2. Qatar Airways (Kochi), Opposite Partie Hotel Le Meridien. Mezzanine Floor, Maradu P.O., Kochi-682304. Represented by its Manager Sri. Manikandan Janardan

(op1 and 2 rep. by Adv.Nisha George Poonthottam, Perandoor Road, Kaloor, Kochi-682 017)

FINAL ORDER**D.B.Binu, President****1) A brief statement of facts of this complaint is as stated below:**

The complaint is filed under Section 12 (1) of the Consumer Protection Act,1986. The brief facts, as averred in the complaint, are that the complainant is an advocate, and a designated senior advocate filed a complaint against an airline under Section 12 (1) of the Consumer Protection Act, 1986. The complainant, along with a group of friends, planned a trip to Scotland on 15.04.2018 from Cochin International Airport and booked tickets with Qatar

Airways well in advance on 22-12-2017. The complainant reached Cochin International Airport in the early hours of 15-04-2018 and obtained boarding passes for the two sectors for the travel from Cochin to Doha and Doha to Edinburgh. However, upon reaching Doha for a connecting flight to Edinburgh, the complainant was denied permission to board the plane due to overbooking despite having boarding passes for the flight. The airline staff claimed denial of boarding was a normal practice and offered accommodation for the night and a flight the next day, causing inconvenience and hardship to the complainant. The complainant alleges unfair trade practice, deficiency in service, and fraud by the airline. The complainant seeks compensation of Rs. 10,00,000/- (Ten Lakhs only) and the costs of the legal proceeding

2. Notices

Notices were issued from the Commission to the opposite parties. The opposite parties received the notice and filed their versions.

3) THE VERSION OF OPPOSITE PARTY NO. 1 AND 2 in brief

The Opposite Party is Qatar Airways, a Qatari company registered in the State of Qatar. The Senior Manager ISC, Mr. Naveen Chawla, is the authorized signatory representing Qatar Airways in the present case. The party denies the validity of the case and requests this Commission to consider preliminary objections before proceeding. Qatar Airways operates in India in compliance with Indian laws and conducts transactions with IATA registered agents or passengers through their website or sales counters.

The party claims to have fulfilled its contractual obligations and provided compensation to the complainant, who is accused of fraudulent conduct and seeking monetary gains through false claims. The party argues that the present suit is vexatious and an abuse of due process.

The opposite parties stated in the version as follows:

"V. That the Customer representative of the Opposite Party apologies to the customer/complainant for the inconvenience caused to him and as the reason for

such inconvenience, the complainant was provided accommodation in a Hotel accommodation in Doha and a meal voucher.

VI. The complainant/passenger/claimant could not be boarded in QR 29 flight from Doha to Edinburgh Airport, United Kingdom on 15th April 2018 due to overbooking because of a technical issue."

The party also raises the issue of non-joinder of necessary parties, stating that the absence of such parties renders the case untenable. The aviation industry is governed by various statutes and international conventions, including the Carriage by Air Act, 1972, the Warsaw Convention, and the Montreal Convention. The party emphasizes the role of the International Air Transport Association (IATA) in representing and serving the airline industry.

Regarding the specific case, the complainant booked a flight but faced issues during transit due to overbooking. Qatar Airways provided hotel accommodation, meal vouchers, an alternative flight, and a refundable voucher as compensation. The party denies the allegations made by the complainant and requests strict proof of the claims.

In conclusion, the party argues that the complainant is not entitled to the claimed relief and requests the dismissal of the complaint.

3) Evidence

The complainant had produced proof affidavit and 5 documents that were marked as Exhibits A-1 to A-5. The complainant was examined by the advocate commissioner as PW-1.

Exhibit A 1: Original Boarding Pass for COK-DOH dtd. 15.04.2018.

Exhibit A 2: Original Boarding Pass for DOH-EDI dtd. 15.04.2018.

Exhibit A 3: Original Boarding Pass for DOH-EDI dtd. 16.04.2018.

Exhibit A 4: Original Boarding Pass for DOH-COK dtd. 25.04.2018.

Exhibit A 5: Office copy of the Lawyer's Notice dtd. 15.05.2018 along with the postal receipt.

The opposite parties had produced proof affidavit and 2 documents that were marked as Exhibits B-1 to B-2. The opposite parties had been examined as DW-1.

Exhibit B1: copy of the Authorization Letter/Power of Attorney in favour of Mr. Naveen Chawla.

Exhibit B2: copy of the passenger charter issued by M.C.A.

5) The main points to be analyzed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

As per Section 2 (1) (d) of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The complainant had produced EXHIBIT A1 to EXHIBIT A4 boarding passes with the 1st opposite party airlines to prove the transaction with the 2nd Opposite Party which is the branch office of the 1st Opposite Party in Ernakulam. Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986 (Point No. i) goes against the opposite parties.

- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?

The airline industry is governed by various statutes as legislated by the Government of India and in particular the Aircraft Act, 1934 and the Carriage by

Air Act, 1972. Both these acts were made to implement Conventions relating to International Civil Aviation standards and recommended practices.

The complainant herein is aggrieved as he was 'denied boarding' against his will during the second leg of his journey from Doha to Edinburg in QR29 by the 1st Opposite Party Airlines due to 'overbooking' on 15-04-2018.

'Denied Boarding' is given a definition under the Civil Aviation Requirement Section-3, Series M Part IV "Facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delays in flights." Rev.3, dated 27th Feb, 2019 hereinafter referred to as 'CAR' produced by the Opposite Parties as Annexure – B. Denied boarding is given a definition under Paragraph 2.6 of the CAR as

Denied Boarding means a refusal to carry a passenger or passenger holding confirmed ticket on a flight although he/she has presented himself/herself for boarding within the time specified by the airline, except where there are reasonable grounds to refuse carriage such as reasons of health, safety or security, or inadequate travel documentation.

The specific case of the complainant is that he was assigned seat 29H in flight Doha to Edinburg in QR29 by means of a boarding pass on 15.04.2018 which is produced as EXHIBIT A2. The complainant was denied boarding on his second leg of journey from Doha to Edinburg despite having a boarding pass. The complainant pleaded with the opposite parties that the principle of last come first go must be adopted in cases of overbooking and as such the complainant was not the person to be offloaded because he had booked tickets four months in advance. Furthermore, the complainant argues that the action on the part of the opposite parties is a deficiency of service and an unfair trade practice.

The 1st Opposite Party argues that the complainant is denied boarding in Flight No. QR 29 from Doha, Qatar to Edinburgh, Scotland on 15.04. 2018 due to overbooking of the flight that occurred due to some technical error in the booking system of the Opposite Parties which was not intentional on the part of the Opposite Parties. The opposite parties admit that the complainant herein has been involuntarily denied boarding due to some technical error on their part. The

counsel for the Opposite Party vehemently argues that the complainant if at all eligible for any compensation will be governed by the CAR under

3.2 Denied Boarding

3.2.1 When the number of passengers, who have been given confirmed bookings for travel on the flight and who have reported for the flight well within the specified time ahead of the departure of the flight, are more than the number of seats available, an airline must first ask for volunteers to give up their seats so as to make seats available for other booked passengers to travel on the flight, in exchange of such benefits/facilities as the airline, at its own discretion, may wish to offer, provided airports concerned have dedicated check-in facilities/gate areas which make it practical for the airline to do so.

3.2.2 If the boarding is denied due to condition stated at Para 3.2.1 to passengers against their will, the airline shall not be liable for any compensation in case alternate flight is arranged that is scheduled to depart within one hour of the original schedule departure time of the initial reservation. Failing to do so, the airline shall compensate the passengers as per the following provisions:

- a) An amount equal to 200% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 10,000, in case airline arranges alternate flight that is scheduled to depart within the 24 hours of the booked scheduled departure.
- b) An amount equal to 400% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 20,000, in case airline arranges alternate flight that is scheduled to depart more than 24 hours of the booked scheduled departure.

c) In case passenger does not opt for alternate flight, refund of full value of ticket and compensation equal to 400% of booked one-way basic fare plus airline fuel charge, subject to maximum of INR 20,000.

3.2.3 A passenger booked on connecting flights of the same airline or of the other airline, shall be compensated by the airline of the first flight for the first leg in accordance with the provisions of Para 3.2.2 of this CAR, when he has been delayed at the departure station on account of denied boarding, but has arrived at the final destination at least three hours later than the scheduled arrival time.

The Opposite Parties argue that the complainant has been provided USD 250 voucher (though not encashed by the complainant) which is equal to Rs.16,302/- as per the conversion rates prevailing then and also provided with hotel accommodation at Doha and meal vouchers and an alternate flight within 24 hours. Thus, compensation has been provided to the complainant as per the CAR Para 3.2.2, Para 3.6.1 and Para 3.7 and hence there is no deficiency of service. The compensation offered to the complainant is more than that provided under the CAR and thus nothing remains to be performed on the part of the Opposite Parties.

Para 3.8 of the CAR speaks about Passenger Redressal.

3.8 Passenger Redressal

3.8.1 When affected by denied boarding, a cancellation or a long delay, the passenger may complain directly to the airline in the event the airline has not provided the compensation and/or reasonable facilities as specified in this CAR.

3.8.2 The passenger may file the grievance on Air Sewa App or Portal.

3.8.3 If the passenger is not satisfied with the resolution of grievance by airline and/or Air Sewa, the passenger has liberty to complain to any statutory body/court set up under relevant applicable laws.

Furthermore, the Consumer Protection Act, 1986 Section 3 states that

3. Act not in derogation of any other law. — The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

The above provision makes it immensely clear that a passenger has liberty to complain to any statutory body/court set up under relevant applicable laws. In the instant case the complainant was not satisfied with the redressal of his grievance and has approached this District Commission for the redressal of his grievances. This issue is more specifically dealt by **the Hon'ble High Court of Delhi in Pallav Mongia vs. Union of India & Anr. W.P.(C) No. 12006/2015 (2018 SCC OnLine Del 7006, decided on 02.02.2018)**

5. A plain reading of paragraph 3.2 indicates that the DGCA has recognized that certain airlines follow the practice of overbooking flights; however, the same cannot be read to mean that the DGCA has permitted the airlines to do so. And, it certainly cannot mean that such practice has the sanction of law.

6. Mr Ahluwalia, the learned counsel appearing for the DGCA also confirms that the petitioner has completely misread the impugned CAR to mean that the DGCA has countenanced such practice. He submits that the

DGCA had issued the impugned CAR, inter alia, to ensure that the passengers, who are denied boarding, are paid immediate compensation and necessary arrangements for their travel are made by the concerned airline. He clarified that this did not mean that the DGCA had permitted the airlines to adopt the said practices.

7. Mr Virmani, the learned counsel appearing for the petitioner further contended that the compensation payable to the passengers who are denied boarding despite holding confirmed bookings, has been restricted by the impugned CAR. According to him, this is without jurisdiction. He contended that the DGCA has no power to issue directions restricting the compensation payable to such passengers. In this regard, Mr Ahluwalia clarified that the impugned CAR could in

no manner be read so as to cap the liability of various airlines. He stated that the direction to pay compensation as provided under the impugned CAR was for the benefit of the passengers. He states that the amount of compensation as mentioned in the impugned CAR indicated only the immediate relief that the airlines were required to provide to the passengers who had been denied boarding. He stated that this did not bind the passengers in any manner and they were not precluded from taking any action to recover further compensation as available in law.

In the light of the above decision of the Hon'ble High Court of Delhi, this District Commission thus finds no merit in the argument raised by the counsel for the Opposite Parties that this Commission cannot grant compensation beyond that is provided under the CAR. Before going any further, we are of the opinion that it is relevant to examine whether this was an instance of denial of boarding due to overbooking as admitted by the Opposite Parties in their version and proof affidavit or whether this is an instance of overissue or multiple issue of boarding passes by the Opposite Parties. It is clear from the evidence adduced that the Opposite Parties that they have not resorted to the procedure enunciated in Para 3.2.1 of the CAR. Furthermore, once boarding passes are issued by the opposite parties produced as 'EXHIBIT A2 boarding pass by the complainant' which specifies the seat number and flight number, the Opposite Party cannot go back from its performance of the contract without any valid reason as mentioned in CAR Paragraph 2.6 definition of 'denied boarding' i.e "except where there are reasonable grounds to refuse carriage such as reasons of health, safety or security, or inadequate travel documentation.' The Opposite Parties does not have a case that the complainant herein was refused carriage due to any of the abovementioned reasons. In light of Section 2(g) of the Consumer Protection Act, 2019 which gives the definition of "deficiency"

.... means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance

which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

This District Commission finds merit in the argument raised by the counsel for the complainant that this is not a case of denial of boarding due to overbooking rather the complainant herein is denied boarding due to practice of issuance of multiple boarding passes for the same seat in violation of CAR and other International Conventions and guidelines which only deals with overbooking of tickets by which a passenger would be denied issuance of the boarding pass. Thus, this Commission has found out that there is a clear deficiency of service on the part of the Opposite Parties who also has indulged in an 'unfair trade practice' by means of 'unfair method or unfair or deceptive practice' for their illegal enrichment especially since airline tickets price surge during high demand and when booked near to the date of travel. The argument raised by the complainant that he has been discriminated against by other foreign passengers also finds merit since there is a clear discrepancy in the documents produced by the Opposite Parties in compliance with I.A.No.45/2022 dated 30.12.2022 for the production of List of passengers. The mentioned document presents the roster of passengers who were supposed to travel on flight QR29. However, the document only indicates that the complainant was not allowed to board the flight, despite having a printed boarding pass. There is no mention of the complainant's friends being scheduled to travel on the same flight. The document portrays the complainant as the sole individual commencing their journey from Cochin International Airport. The opposing parties have acknowledged in their statements and evidence that the complainant and their friends were issued boarding passes from Kochi. The fact that the document, claimed by the opposing parties to be an extended passenger manifest for flight QR29 from Doha to Edinburgh, does not include the names of the complainant's friends, indicates that the document is falsified. This Commission finds weightage

in the argument raised by the complainant and thus a negative inference can be drawn against the Opposite Parties.

The learned counsel for the complainant highlighted that the opposite parties admitted the following in their version:

- The customer representative of the opposite party issued an apology to the customer/complainant for the inconvenience caused, and as a resolution, provided them with accommodation in a hotel in Doha along with a meal voucher.
- The complainant, who was a passenger, was unable to board the QR 29 flight from Doha to Edinburgh Airport, United Kingdom on 15th April 2018 due to overbooking resulting from a technical issue.

In summary, the opposite parties acknowledged the apology and compensation offered to the complainant for the inconvenience caused, as well as the specific incident where the complainant was unable to board the flight due to overbooking caused by a technical issue.

The learned counsel for the complainant submitted that the opposite party's deficiency in service and unfair trade practices caused the complainant significant mental agony and inconvenience. Despite the complainant's efforts to address the issue, their pleas were ignored, and the complainant, along with their friends, was denied boarding despite having boarding passes. After waiting for three hours, the opposite parties finally provided the complainant with accommodation in a hotel room and tickets for a flight to Edinburgh on the following day. As a result, the complainant reached their destination a day late and was barely able to make it to their trekking venue on time. The complainant experienced exhaustion from jet lag, limiting their ability to enjoy planned sightseeing activities, and endured significant mental anguish and trauma throughout the ordeal.

In the light of the above this Commission finds that the Opposite Parties have indulged in deficiency in service and unfair trade practice and is thus liable to compensate the complainant for the same.

Since no specific averments are made by the complainant regarding the damage caused. Reference is made to the decision of **the Hon'ble NDRC in Air France vs O.P. Srivastava - MANU/CF/0239/2018**

34. It is trite that in considering the quantification of compensation, a precise calculation is difficult, as no clear or straitjacketed principles can be designed for the said purpose. Hence, the exercise would invariably involve discretion and consideration of a plethora of variables, depending on the facts and the circumstances of the case. Some broad factors that may be considered while scrutinizing claims for compensation/damages include:

(a) background of the parties, both the injured and the negligent or defaulting party;

(b) the degree of negligence or these verity of the defaulting act that caused the injury to the complainants;

(c) the degree of proximity or causation of defaulting acts resulting in the injury; and

(d) consideration of alternative modes of redressal of the Complainant's grievance like restitution, general and specific damages, other means of non-monetary compensation, etc. Needless to add that the above parameters are only illustrative and not exhaustive.

The learned counsel for the complainant also argued that the opposite parties have made serious allegations against the complainant, accusing him of fraudulent conduct, adopting vexatious tactics to defame their reputation, and being a liar without any basis. These statements were made with the intention of tarnishing the complainant's reputation, who is a well-known lawyer. However, in the deposition of DW1 on page 4, the witness claimed ignorance of the circumstances surrounding the statements made in the opposite parties' version. The complainant's legal career was highlighted, including their designation as a Senior Advocate of the Honourable High Court of Kerala and his current position as a sitting Judge of the Hon'ble High Court of Kerala, suggesting that the allegations lack genuine intent.

It is pertinent to note that the complainant's credibility and integrity have been questioned and also called a liar and accused of engaging in fraudulent conduct. The complainant herein has only exercised his legal right to redress his valid grievances against the opposite parties. It is unfair and inappropriate for the airlines to make baseless accusations against a consumer who has filed a complaint seeking to address their legitimate rights, especially when the airline claims to have a good reputation and goodwill as a service provider.

The deficiency in service and unfair trade practice adopted by the Opposite Parties is not envisaged by the Carriage by Air Act, 1972 or by the Civil Aviation Requirement Section-3, Series M Part IV "Facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delays in flights." amended from time to time. It is undisputed that the complainant arrived at his destination with a delay of one day and thus the complainant argues that he barely managed to reach the trekking venue on time. As a result of jet lag, the complainant was exhausted from his challenging trek and couldn't fully enjoy the sightseeing activities he had planned. Furthermore, this experience caused significant mental distress and trauma for the complainant.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Parties are liable to compensate the complainant.

This amounts to unfair trade practice and deficiency in service on the part of airlines denying boarding to passengers who hold valid boarding passes without assigning any reason whatsoever.

We find the issues Nos. (ii) to (iv) are found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconveniences, mental agony, hardships, financial loss, etc. due to the negligence of the Opposite Parties.

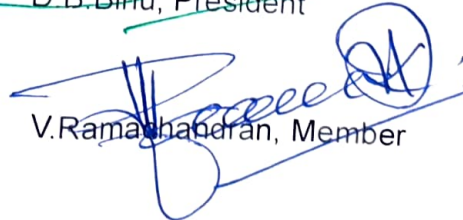
Hence the prayer is partly allowed as follows:


- i. The opposite parties shall pay an amount of Rs.7,00,000/- (Rupees Seven Lakh) to the complainant as compensation for the loss sustained to the complainant for the mental agony, hardship, and physical stress afforded by the complainant due to the deficiency of service and unfair trade practice by the opposite parties.
- ii. The Opposite Parties shall also pay the complainant Rs.50,000/- towards the cost of the proceedings.

The 1st and 2nd Opposite Parties are jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order failing which the amount ordered vide (i) and (ii) above shall attract interest @9% from the date of receipt of a copy of this order till the date of realization.

Pronounced in the Open Commission on this 3rd day of July 2023.


D.B. Bindu, President


V. Ramasubramanian, Member


Sreevidhya T.N., Member