

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
U.T., CHANDIGARH**

Appeal No.	:	16 of 2022
Date of Institution	:	09.02.2022
Date of Decision	:	07.02.2023

- 1] Union of India, Ministry of Railways, through Chairman, Railway Board, Rail Bhawan, Raisena Road, New Delhi-1100001.
- 2] Divisional Railway Manager, Northern Railways, Ambala.
- 3] Station Master, Railway Station Chandigarh.
- 4] The Deputy Train Suptd./TTE Rajdhani Express, New Delhi-Mumbai Central, through Station Master, Railway Station, New Delhi.
- 5] Chief Commercial Manager (Refunds), Rail Bhawan, Raisena Road, New Delhi-1100001.

.....Appellants/Opposite Parties No.1 & 3 to 6.

VERSUS

- 1] Amandeep Singh, age 35 years, Son of Late Shri Sohan Singh, Resident of H.No.650/2, Sector 38-A, Chandigarh.

.....Respondent/Complainant.

- 2] Indian Railway Catering and Tourism Corporation Ltd. SCO 80-82, 3rd Floor, Sector 34-A, Behind Piccadily Cinema, Chandigarh, 160022, through its Regional Manager.

.....Respondent/Opposite Party No.2.

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

MR. RAJESH K. ARYA, MEMBER

Argued By:-

Sh. Rohit Kumar, Advocate for the appellants.

Mrs. Madhu P. Singh, Advocate for respondent No.1 alongwith respondent No.1 in person (assisted by Sh. Jatin Bansal, Advocate).

Respondent No.2 already deleted vide order dated 21.04.2022.

PER RAJESH K. ARYA, MEMBER

This appeal has been filed by opposite partis No.1 & 3 to 6 (appellants herein) against order dated 27.12.2021 passed by District Consumer Disputes Redressal Commission-I, U.T., Chandigarh [in short 'District Commission'], whereby consumer complaint No.253 of 2019 has been partly allowed against them by granting following relief:-

“11. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. Opposite Party No.1 & 3 to 6 are directed as under :-

- i. To refund amount of Rs.9520/- to the complainant alongwith interest @ 9% per annum from the respective date of deposit till realization.
- ii. to pay an amount of Rs.5000/- to the complainant as compensation for causing mental agony and harassment to him;
- iii. to pay Rs.3000/- to the complainant as costs of litigation.

12. Complaint qua Opposite Party No.2 is dismissed vide order dated 05.03.2021.

13. This order be complied with by the Opposite Party No.1 & 3 to 6 within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.”

2. Briefly stated the facts as culled from the impugned order passed by Ld. District Commission are that the complainant and his wife had to travel from Chandigarh to Mumbai on 30.05.2018 for their honeymoon and as such, on 22.05.2018, the complainant booked two First Class tickets of Rajdhani Express from Delhi to Mumbai. He paid Rs.9,520/-, however, the status of the tickets was waitlisted at Sr. No.8 & 9. The booking clerk assured that the tickets would be confirmed before 30.05.2018. Later-on, the status of tickets was changed to waiting list at Sr. No.2 & 3. Upon reaching the railway station, the opposite parties repeatedly assured that the tickets would be confirmed. Upon arrival of the train at railway platform, the complainant contacted TTE and requested to adjust them against such seats, however, he was informed that there is no room and seats could not be made available. Lastly, since the complainant and his wife had to reach Mumbai on the same date, so the complainant booked Air India tickets at cost of Rs.31,304/- on 30.05.2018 and undertook the journey as such. The complainant requested the opposite parties for refund of Rs.9520/-, which was denied. Hence, complaint was filed before the Ld. District Commission alleging deficiency in rendering service and unfair trade practice on their part.

3. In their reply, Opposite Parties No.1 & 3 to 6 stated that as per Rule 306 of Indian Railway Conference Association Coaching Tariff No.26 Part 1(Volum-1), which came into force on January, 2007, Railway Administration do not guarantee reserved seats to any of the customer and nobody can take guarantee for the reservation of seat or anything which is provided by the Indian Railways. It was stated that no assurance was given by the booking clerk at the counter for the ticket confirmation and further that the complainant never approached the authorities for the refund of the amount on time. It was further stated that the complainant contacted the counter for cancellation of the ticket after expiry of the time limit and therefore, refund of fare was denied in accordance with Coaching Tariff Rules.

4. In its reply, Opposite Party No.2 stated that as per Railway passengers (Cancellation of tickets and refund of fare) Rules, 1998, no refund of fare shall be granted on RAC or wait listed ticket after thirty minutes before the scheduled departure of train. Subsequently on the application of the complainant, consumer complaint against Opposite Party No.2 was dismissed vide order dated 05.03.2021.

5. The order of the Ld. District Commission has been assailed by the appellants mainly on two grounds. Firstly, it has been stated that Sections 13, 15 and 28 of the Railways Claims Tribunal Act, 1987 bar the jurisdiction of this Commission to adjudicate upon any dispute relating to claims for refund of fares or part thereof or for refund of any freight paid etc. and the provisions of the Railways Claims Tribunal Act, 1987 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. To say so, he referred to the judgment of State Consumer Disputes Redressal Commission, Punjab in case Northern Railways & anr. Vs. Sahil Bansal, First Appeal No.224 of 2022 decided on 24.03.2022. Secondly, it has been stated that the Ld. District Commission has failed to consider that as per Notification dated 04.11.2015, Rule 7 (3) clearly mentions that “No refund of fare shall be granted on RAC tickets or wait listed ticket after thirty minutes before the scheduled departure of the train”, therefore, the finding given by the Ld. District Commission is liable to be set aside.

6. On the other hand, on behalf of respondent No.1, it has been argued that the Ld. District Commission rightly allowed the complaint by passing a well reasoned order by directing the appellants to refund the amount alongwith compensation and costs of litigation. Rebutting the first contention raised by the Ld. Counsel for the appellants, it has been argued that since the provisions of Section 3 of Consumer Protection Act, 1986 (now Section 100 in new Consumer Protection Act 2019) are in addition to and not in derogation of the provisions of any other law for the time being in force, therefore, the argument of the appellants cannot be accepted. To the second contention raised by the Ld. Counsel for the appellants, it has been argued on behalf of respondent No.1 that in the garb of Rule 7(3) pertaining to no refund of fare, the appellants are being unduly enriched by not refunding such fare where the consumer failed to cancel the ticket within 30 minutes before the scheduled departure of the train and further, when the appellants had also accepted the fare from other consumer too against such booking, as in the case of the complainant. It has been argued that such Rule, which infringed the rights of the consumer is unconscionable and is liable to be struck down in view of Section 49 of Consumer Protection Act, 2019. It has been further argued that the appellants ought to have refunded the fare to the complainant, which the Ld. District Commission has rightly ordered vide the impugned order.

7. After considering the rival contentions of the parties and going through the material available on record, we are of the concerted view that the appeal is liable to be dismissed for the reasons to be recorded hereinafter. So far as the first contention raised by the appellants with regard to this Commission not having the requisite jurisdiction under the provisions of Sections 13, 15 and 28 of the Railways Claims Tribunal Act, 1987, it may be stated here that this contention has no merit keeping view Section 3 of Consumer Protection Act, 1986 & Section 100 of Consumer Protection Act, 2019, provisions whereof are in addition to and not in derogation of the provisions of any other law for the time being in force. This Commission has come across the Judgment delivered by Hon'ble National Consumer Disputes Redressal Commission, New Delhi in case Western Railway Vs. Vinod Sharma, Appeal No.451 of 2015 decided on 18.01.2017, wherein, the Hon'ble National Commission held as under:

"17. A plain reading of the provisions quoted above from the [Railways Act](#), 1989 and the [Railway Claims Tribunal Act](#), 1987 indicates that an elaborate mechanism has been laid down for providing compensation in the event of accidents, untoward incidents and allied matters, during the course of the operations, carried out by the Railways and for that purpose, the jurisdiction, powers and authority of the Claims Tribunal have been laid down. It is to be determined, however, whether keeping in view the above provisions, the consumer fora shall also have the jurisdiction to deal with the matters, involving railway accidents. The issue has come up for consideration from time to time before the Hon'ble Apex Court and this Commission as well. It has been observed that the [Consumer Protection Act](#) is a special legislation, enacted to provide better protection for the interests of consumers in diverse fields. It is true that for specific sectors such as banking, finance, insurance, supply of electricity, entertainment etc., appropriate mechanism has been laid down in the respective statute, to provide suitable relief to the consumers as per requirements. However, the [Consumer Protection Act](#) is a beneficial legislation, specially enacted for the protection of the consumers and provides an additional remedy in the shape of Section '3' of the [Consumer Protection Act](#), which clearly lays down that the provisions

of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. A harmonious construction of the provisions contained in the [Consumer Protection Act](#) and the [Railways Act](#) etc. shall indicate that the jurisdiction of the consumer fora cannot be barred, even if the provisions to provide compensation are laid down in the Railway legislation. The Hon'ble Supreme Court in their order in [Secretary, Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha](#) (dead) through LRs, I (2004) CLT 20 (SC) and in [Trans Mediterranean Airways vs. Universal Exports, IV](#) 2011 CPJ 13(SC) observed that, "having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers, the better provisions are to be interpreted broadly, positively and purposefully to give meaning to additional/extended jurisdiction, particularly when Section '3' seeks to provide remedy under the Act in addition to other remedies provided under other Acts, unless there is clear bar.

18. [In State of Karnataka vs. Vishwabarathi House Building Co-op. Society, I](#) (2003) CPJ 1 (SC), the Hon'ble Supreme Court observed, that by reasons of the provisions of Section '3' of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the Civil Courts or other statutory authorities.

19. Based on the discussion above, it is held that the consumer fora do have the jurisdiction to deal with the present case and hence, the consumer complaint cannot be dismissed on the ground of lack of jurisdiction by the consumer fora. "

8. We are further supported in this view in the orders passed by the Hon'ble Supreme Court in "[The Secretary, Thirumurugan Co-operative Agricultural Credit Society versus M. Lalitha \(dead\) through LRs](#)" [AIR 2004 SC 448], and "[M.D., Orissa Coop. Housing Corpn. Ltd. vs. K.S. Sudarshan](#)" [[Civil Appeal No.36/2003](#) decided on 29.04.2009]. It is held, therefore, that the Consumer Fora do have the jurisdiction to handle the present consumer complaint, even when the provision existed to deal with the cases for refund of fares in the [Railways Claims Tribunal Act](#), 1987.

9. Thus, in our considered view, Section 3 of Consumer Protection Act 1986 cannot be said to be provision inconsistent with the [Section 28](#) of the Railway Act. No doubt that the Railway Claim Tribunal has jurisdiction to deal with the case mentioned in [Section 13](#) but it does not bar the jurisdiction of the Consumer Court. As per the preamble of the [Consumer Protection Act](#), the Act is to provide the protection of consumer interest and for that purpose the authorities are established for timely and effective administration of the consumer disputes. In [Lakshmi Engineering Works Ltd. Vs. PSG Industrial Institute](#), 1995 AIR 1428, the Hon'ble Supreme Court has observed that the District Commission, State Commission and National Commission are not court but Quasi-Judicial Tribunals in the context of present case to give meaning to additional jurisdiction particularly with [Section 3](#) which provides remedy under the act in addition to other remedy provided under the [Railway Act](#). It shows that there is no inconsistency so far as the jurisdiction of the Consumer Court is concerned. However, [Northern Railways & anr. Vs. Sahil Bansal \(supra\)](#) relied upon by the appellants is distinguishable on facts and this Commission is not bound to follow the said judgment. In view of above discussion, the contention raised by the Ld. Counsel for the appellants with regard to jurisdiction of Consumer Fora stands rejected.

10. Now coming to the second contention raised by the Ld. Counsel for the appellants that respondent No.1 is not entitled to refund in view of specific provision of Rule 7(3), it may be stated here that it is an admitted position on record that neither the complainant could travel nor his hard earned money spent by him has been refunded by the appellants. One cannot have one's cake and eat it too. Here the appellants cannot be permitted to usurp the money, which the complainant spent as fare for the journey, which it never undertook as his tickets were not made available or confirmed till the last minute of departure of the train. It is the case of the appellants that the complainant did not approach them for cancellation within 30 minutes of the departure of the train. In our concerted view, the provisions of Rule 7(3) *ibid* are not in the interest of a consumer, who despite

paying the fare and in the waiting list, when not getting any availability of seat or booking whether confirmed or unconfirmed, is not refunded the fare paid by him against such booking. The appellants cannot make profit under the garb of their statute i.e. on one hand, usurp the fare paid by such a consumer who did not get availability of seat and simultaneously, receiving fare from other successful passenger having confirmation for the same seat. Against the same seat allotted to a successful passenger, the appellants cannot charge fare from unsuccessful passenger, who failed to get availability of the said same seat. We fail to understand, what loss has been caused to the appellants on this score, rather, they have got double the fare against same seat. Such rules are detrimental to the interest of the consumers, which put them into unnecessary financial loss. Section 49 of Consumer Protection Act, 2019 clearly empowers this Commission to declare any term of contract, which is unfair to any consumer, to be null and void. We feel that in the interest of a consumer, the appellants should have curtailed their practice and procedure to charge fare from the persons, who could not get availability of seat or confirmation of seats and later, notwithstanding the fact, whether they get it cancelled or not within the stipulated window of 30 minutes before the scheduled departure of the train. Sometimes, it is not possible for a person, who is in the waiting list with the hope of getting the confirmation of his or her booking, to cancel it within the stipulated time. May be we are in the modern era of using technology through mobiles and laptops etc. but every person cannot be expected to be so equipped with technology or aware of the same, so that he or she could avail it for the purpose of cancellation of tickets at once within the stipulated time while standing in a large queue at such a busy railway station like New Delhi. All these aspects ought to have been taken into consideration by the appellants and devise a criteria, which can make the things easier for every citizen of every category to its benefit in true perspective without any harassment and complexities involved therein. Thus, the conduct of the appellants in denying the refund of the ticket fare for non-travelling on account of non-confirmation of booking by the complainant is unfair & clear deficiency in service, which resulted in not only financial loss to the complainant but also caused suffering and mental agony. The Ld. District Commission has rightly observed that had appropriate action been initiated by the opposite parties to redress the genuine grievance of the complainant, there would have been no necessity for the complainant to indulge in the unnecessary litigation. In our considered view, the Ld. District Commission rightly allowed the complaint and the present appeal is liable to be dismissed being meritless.

11. For the reasons recorded above, the appeal, being devoid of any merit, is dismissed with no orders as to costs.
12. Certified copies of this order be sent to the parties free of charge.
13. File be consigned to Record Room after completion.

Pronounced

07.02.2023.

(RAJ SHEKHAR ATTRI)

PRESIDENT

(RAJESH K. ARYA)

MEMBER

Ad

