

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution:13.03.2020

Date of hearing: 24.03.2023

Date of Decision: 21.07.2023

COMPLAINT CASE NO.-154/2020

IN THE MATTER OF

MR. SHAMEEM UDDIN,
S/o MR. ALIMUDDIN,
R/o OLD RTO COMPOUND,
CIVIL LINES, MORADABAD (U.P.)

(Through: Mr. Mahmood Alam, Advocate)

...Complainant

VERSUS

1. THE COUNTRY HEAD OF KUWAIT AIRWAYS,

401 ASHOKA ESTATE,
24-BARAKHMBA ROAD,
NEW DELHI-110001

2. KUWAIT AIRWAYS,

ROOM NO. 109,
LEVEL-V, IGI AIRPORT TERMINAL-III,
NEW DELHI-110037.

(Through: Ms. Deepika Gupta, Advocate)

3. M/S SCORPIONS,

SHOP F, SHOPPING ARCADE,
HOTEL THE CONNAUGHT,
NEAR SHIVAJI STADIUM,
NEW DELHI-110001.

...Opposite Parties

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Mahmood Alam, counsel for the Complainant
Ms. Deepika Gupta, counsel for OP No. 1 & 2.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The present Consumer Complaint has been filed before this Commission under Section 17 & 18 of the Consumer Protection Act, 1986, seeking the following reliefs:
 - a) *“Refund the entire ticket money of Rs.52,068/- with Rs.7,500/- as 10% interest till the date of filing of the present complaint.*
 - b) *Compensate the business loss and other compensation of Rs.55,00,000/- (Rupees fifty-five lakhs only) together with Rs.45,000/- (Rupees forty-five thousand only) towards cost of the present litigation.*
 - c) *Pass such other, further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*
2. The brief facts necessary for the adjudication of the present complaint are that the Complainant is engaged in the business of handicraft export. The Complainant bought a round trip air ticket from Delhi-Kuwait-London from office of Kuwait Airways, New Delhi to attend the Spring Fair International in U.K. in which the Complainant had booked a booth, scheduled to be held in the first week of February 2019. On 01.02.2019, the Complainant embarked on flight no. KU 384 Delhi-Kuwait-London. However, on reaching to Kuwait

airport he was not allowed to board the connecting flight to London and was illegally sent back from Kuwait airport to New Delhi despite having all the travel documents. Subsequently, on 03.02.2019 the Complainant bought fresh air ticket from Indian Airlines and directly reached Birmingham without any problem. Thereafter, the Complainant issued legal notice dated 15.06.2019 to the Opposite Parties for refund of the ticket price along with damages. The Opposite Party No.1 and 2 sent reply dated 10.06.2019 to the notice of the Complainant whereby the claims of Complainant were rejected.

3. Further, the staff of Kuwait Airways at Delhi counter noted down the complaint of the Complainant and promised to send the detailed report stating the reasons for not allowing the Complainant's onboard journey, however, no reasons were furnished by the staff despite repeated requests. Therefore, alleging the deficiency of service on the part of Opposite Parties, the Complainant approached this Commission.
4. The Opposite Parties No.1 & 2 have filed their written statement and stated therein that no case of negligence or dereliction of duty is made out in the Complaint. It is further submitted that the Complainant was offloaded from the flight and was deported to India on account of "poor profile" by the Airline Liaison Officer (ALO) Mr. Arin Ghosh, who is representative of Embassy of United Kingdom at the Kuwait International Airport for countries of Kuwait, Bahrain, Qatar & Saudi Arabia. Secondly, it is submitted that Mr. Arin Ghosh is a necessary party to the present dispute and as such the Complaint is bad for non-joinder of parties. Lastly, it is submitted that the decision to deport a passenger is completely a prerogative of the Mr. Arin Ghosh, Representative of the UK Embassy and as such the Opposite Parties have no role to play in the deportation of the Complainant, Pressing the aforesaid contentions and submissions, the Opposite Parties have prayed for dismissal of the present Complaint.

5. The Complainant has filed his Rejoinder rebutting the written statement filed by the Opposite Parties. The Evidence by way of Affidavit of the parties and Written arguments on behalf of the parties are on record.
6. We have perused the material available on record and heard the counsels for the parties.
7. On perusal of record, we find that the Opposite Party No.3 is a Performa party to the present case and no relief has been sought against Opposite Party No.3.
8. It is the case of the Opposite Parties No.1&2 (*hereinafter jointly referred to as the Opposite Parties*) that the Complainant was offloaded from the connecting flight on account of his poor profile. So the ***first question*** that falls for our consideration is ***whether the record discloses that Complainant had a poor profile.***
9. As to the question of “poor profile” of the Complainant, a perusal of ***Annexure C5 (pg 30-37, annexed with the Complaint)*** reflects that the Complainant has obtained visa for countries such as the United States and United Kingdom and has travelled to the UK multiple times. Additionally, it is not possible that the Complainant’s profile is suddenly poor in Kuwait and excellent otherwise. Further, the Opposite Parties neither furnished any substantiated evidence to show that the Complainant had a poor profile nor gave any detailed reply in this regard. Moreover, the Opposite Parties in their reply have merely made an averment that Mr. Arin Ghosh (UK Embassy Representative), instructed deportation, meaning thereby that British Embassy had knowledge of the poor profile of the Complainant. Had this been correct, then it would have been impossible for the Complainant to go to UK by Indian Airlines on 03.02.2019 and clear Immigration Checks as is evident from ***Stamp of Immigration Officer dated 03.02.2019 (Annexure C5 pg-34, annexed alongwith the Complaint)***. Therefore, it is clear that the Complainant is a frequent flyer and has an excellent track record.

10. Furthermore, if the Complainant had a poor profile in the data base of UK Embassy, he would not have been able to obtain the visa for the UK in the first place or to clear the emigration at IGI Airport which can only be done when the travel profile and history of passenger is unquestionable.
11. A further perusal of the record divulges that the Complainant had participated in the International Spring Fair through Export Promotion Council of Handicrafts abroad (*Annexure CWI/4*) which is an Apex body of handicrafts exporters projecting India's image abroad. The record divulges that the Complainant is a reputed exporter and was formally invited to participate vide letter dated 19.12.2018 issued by Mr. Robert Chillman, Finance Director of IET Events Ltd. England and Wales (*Annexure CWI/6*) and his stand photos with the Indian Representative of Export Promotion Council for Handicrafts show that his credentials were clear. Any person with bad credentials prima facie would not have been invited/allowed to participate in the fair through such organisations/bodies. The Complainant had valid visa, passport and other travel documents and the bald averments made by the Opposite Parties fall short of establishing the poor profile of the Complainant as alleged, in light of the stellar track record of the Complainant. Therefore, we answer this point in favour of the Complainant.
12. The *next question* that falls for our consideration is *whether the Complainant was actually deported by the UK Embassy?*
13. To adjudicate this issue, we have taken into consideration the plea of the Opposite Parties that the Complainant was offloaded from the connecting flight and was deported back to India due to his "poor profile," on the advice of the Airline Liaison Officer (*hereinafter referred to as the "ALO"*) on 01.02.2019. However, we are not inclined to accept that the Complainant was ever deported. A perusal of the record suggests that the Complainant was never offloaded from the aircraft. Instead, he was denied boarding in the

first place and was detained by the staff of Opposite Parties at the aircraft's passenger exit bridge.

14. Further, it is pertinent to note that the deportation was neither done by the Police nor by the Kuwait Airport Authority, but was effected by the staff of the Kuwait Airways, astoundingly without furnishing any reasons nor following any proper documentation or issuing any Official Deportation Order.
15. Here, we remark that deportation is a serious action entailing grave consequences, taken by the home country which involves forcible removal of a violator who has no legal right to be present in the home country or who has broken the law. No Deportation Order issued against the Complainant has been placed on record by the Opposite Parties. Therefore, we conclude that terming the “denial of boarding” as “deportation” is a misnomer.
16. Furthermore, in the present case, it is abysmally surprising to note that the Complainant reached Birmingham, UK on 03.02.2019, i.e just one day after the alleged deportation, via Indian Airlines and did not encounter any issues whatsoever on account of his “deportation/poor profile”. The bare perusal of *Annexure C5 (pg-34, annexed alongwith the Complaint)* divulges that the Complainant not only reached Birmingham Airport on 03.02.2019, in fact he was allowed to enter Birmingham by the Immigration Officer as is evident from the Immigration Stamp dated 03.02.2019 on the visa, which is impossible in case the Complainant had been deported. It is to be noted that if the Deportation Order of the Complainant was issued by the UK, it means that the United Kingdom was aware of the Complainant's deportation and it must have been reported to the Embassy of the United Kingdom in Delhi and Kuwait. Under such circumstances, it would have been impossible for the Complainant to have booked a ticket via a Nationalised Airlines and enter Birmingham the next day without facing any grave consequences.

Deportation being a process which involves an interplay of police action, immigration, customs and an official Deportation Order from the Home Office UK, immigration and customs were not alerted in the present case neither any police action was involved. Moreover, neither the Embassy was alerted nor any Deportation Order was issued by the Home Office UK. Hence, as such the question of being deported doesn't arise in the light of the above facts.

17. The *next issue* which needs to be adjudicated is *whether the ALO had the powers to deny boarding to the Complainant.*
18. To adjudicate upon this issue, we have taken into consideration the submission of the Opposite Parties that ALO instructed the Complainant's alleged deportation and as such the Opposite Parties had no role to play in the alleged deportation since such decision is completely a prerogative of the Embassy.
19. We have also taken into consideration the submission of the Complainant that Opposite Parties have planted Mr. Arin Ghosh as the UK Embassy Representative to cheat and dupe the Complainant. Here, it is to be noted that no cogent material has been placed on record to show that Mr. Arin Ghosh is the Representative of the UK Embassy in Kuwait or to show that he played a pivotal role in not allowing the Complainant to board the aircraft. Even if it is assumed that the said ALO is the representative of the UK Embassy, it was incumbent upon the ALO to have stopped the Complainant's unauthorized entry to UK the next day as well on 03.02.2019.
20. In this regard, we deem it appropriate to refer to *clause 2.1 of Code of Conduct for Immigration Liaison Officers*, October 2002 issued by the *International Civil Aviation Organisation* which states as under :

"2.1 LOs must understand that they have no legal powers in a foreign jurisdiction. They may advise airline staff, but

they have no power to compel that a passenger not be carried. They also have no power to arrest or prosecute criminals engaged in the illegal movement of improperly documented passengers within the host's jurisdiction. They may provide information to the local police, immigration authorities or to other government officials as appropriate. However, in the standard conduct of information exchange nothing should oblige a LO to exchange information in contravention of domestic data protection and data handling laws or regulations or policies.”

21. We also deem it appropriate to refer to the section “***Entering and Staying in the UK-Border Control-Passenger Documents***” on the official website of the Government of UK accessible on the link <https://www.gov.uk/government/publications/passenger-documents-help-for-carriers-to-reduce-charges/passenger-documents-get-help-to-reduce-your-charges>, which clearly mentions as :

“ ILMs have no legal powers abroad, so they cannot therefore:

- *instruct an airline to deny boarding to a passenger – ILMs are only able to give advice on whether a passenger is correctly documented; the final decision on whether or not to carry a passenger is solely a matter for the airline*
- *investigate, arrest or prosecute criminals engaged in illegal migration – they will, where appropriate, offer their assistance in identifying those involved.”*

22. From the above referred guidelines, it is clear that the ALO can only advice in regard of the documentation of the passenger but the final decision whether

or not to carry a passenger rests only with the airline. Therefore, in the present case, the submission of the Opposite Parties that they got advice from the ALO of UK Embassy that the Complainant not be carried is without leg and holds no merit in view of the abovementioned guidelines.

23. In view of the aforesaid discussion, the said ALO has no authority or jurisdiction to have any legal power in foreign jurisdiction in regard to compel that a passenger not to be carried. So, the version put forth by the Opposite Parties that the Complainant was denied boarding on the asking of the ALO is totally illegal because the ALO has no power in the foreign jurisdiction. It is pertinent note that had it been the case that the alleged deportation was carried out by the UK embassy, the Complainant would have been stopped by the Immigration Officials on his travel to UK the next day i.e on 03.02.2019 as well.
24. Moreover, a law has been settled by this Commission in ***Indian Airlines and Anr. Vs. B. D. Sharma reported as 2006 (3) CPJ 366***, wherein categorically it has been held as under:-

“Passengers are sold the tickets through the agents or directly by the airlines. Once the airlines provides the status of the ticket 'OK' or 'Confirmed' it has no right to deny the boarding pass to the passengers in possession of such a ticket for any reasons whatsoever. We are living in a civilized and orderly society and therefore, to take such plea that the passengers who purchase the tickets and are given the 'OK' status and confirmed can be denied the boarding pass if they are not a part of the queue meant for “first -come -first served””

25. In the light of above judgment, it is clear that the ticket of the Complainant was confirmed and thereafter, the boarding pass cannot be denied. It is the

duty of the airline to check all documents, which are required for traveling, prior to issue the air- tickets.

26. In our view, the Opposite Parties cannot blatantly shift the burden on the ALO in light of the fact that the UK Immigration Officer did not stop the Complainant and his Immigration was smoothly given clearance the next day. It is implausible as to how the ALO who is claimed to be the Representative of the UK embassy, allowed the same person who was denied boarding a day earlier on account of his “poor profile”, to enter Birmingham on the next day with the same “poor profile”. Thus, we answer this point against the Opposite Parties.
27. We are now faced with *main question* for consideration that *whether the Opposite Party No.1&2 illegally denied the Complainant to board the connecting flight from Kuwait to London and whether such conduct amounts to deficiency in service and unfair trade practice on part of the Opposite Parties.*
28. In this regard, the State Consumer Dispute Redressal Commission, Tamil Nadu in *First Appeal 27/2010* titled as *“The Emirates Airlines Vs Mr. Mohammed Ghafoorur Rahman”* decided on 16.03.2012 was faced with a similar factual matrix and held as follows:

“After perusing the material on record, and hearing rival contentions, we make the following observations. The opposite parties have issued the complainant and his wife confirmed tickets and boarding passes straight away to Jeddah. The complainant and his wife were not allowed to continue their journey from Dubai to Jeddah for defective visa. Generally journey to Mecca is not a frequent travel for any passenger. But it is the duty of the airlines to verify the travel documents and to guide the passengers properly. It

was a mandatory requirement which was completed by the complainant at the consulate of Saudi Arabia. If the defect was pointed out by the opposite parties at Chennai itself, the complainant would not have been put to unnecessary break of travel and consequent to which he had to stay at Dubai. The opposite parties are liable for negligence and deficiency in service for not guiding the passengers to travel with proper visa. It is not the duty of the opposite parties to get the visa. But it is their duty to enlighten the passengers about the requirement of a proper visa to get entry into Jeddah.

.....Since the opposite parties have caused break up travel by their not intimating the complainant about the proper requirements regarding travel documents the District Forum has rightly held them liable for deficiency in service.

29. Therefore, applying the aforesaid observation to the facts and circumstances of the case in hand, it was the duty of the Opposite Parties to enlighten the Complainant about the defects if any, in his profile beforehand, rather than to deny boarding to a connecting flight midway of his journey causing breakup travel.
30. Further, the State Consumer Disputes Redressal Commission, Chandigarh in *Appeal No. 296/2018* titled as **“Sardool Singh Ghuman vs Air India & Anr”** decided on 26.03.2019 held the airlines liable for deficient services in the event of denied boarding to the passenger as follows:

“The first and fore-most conduct of the lady of the Air India, who had entered in the plane and used harsh language and asked the complainant to de-board without assigning any reason itself amounted to deficiency in service on the part of the respondents/Opposite Parties because the appellant, who is very respectable person of the society, in the sense, that he

being a Professor of Physics was invited to present Research Contribution at EUNPC-2015 (European Nuclear Physics Conference-2015) held at Groningen, Neitherlands w.e.f. 31.08.2015 to 04.09.2015. The Air India official, who asked the appellant/complainant to get down from the plane, did not assign any reason to deboard the plane. According to the appellant, the check in baggage was deposited with the respondents/Opposite Parties counter well before the flight timings, after duly getting it examined/checked through x-ray machines. Had there been any amount of suspicion regarding the contents of the bag, there was ample time to the Airport Authority to call over a PA System at the airport and could have asked to remove his bag or get it rechecked in front of the concerned officials but nothing was done. The bag was about to be loaded and plane was about to take off, when the appellant/complainant was asked to get down from the plane. During the course of arguments, Counsel for the respondents mentioned that it was not the responsibility of the Air India to check baggage but it was being done by third party i.e. security agency. However, on perusal of the letter/email enclosed with the record, we find that it has been signed by one Mr.S. Singh, Coordinator – Commercial, Northern Region Customers Services, New Delhi, who appears to have acted on behalf of Air India. From the said letter, it is clearly proved that Air India was responsible for deboarding the complainant from the aeroplane. Furthermore, we find from the records that the appellant/complainant, who is employed with the Private University has given an undertaking to his office that if he does not join duty on the date fixed, it would be assumed that he had taken voluntary retirement from the said organization. That was a condition imposed on him by his employer. The appellant, therefore, had to return on the previous night before his joining duty on the next day morning but unfortunately he was disembarked from the plane and had to face lot of stress & harassment to reach Chandigarh on the same night, so that he could report for his

duty in time. It is not admirable that for a person, who has represented our country in an international seminar to face such insult and stress.

31. Therefore, it flows from the aforesaid decision that denying boarding to a passenger without citing sufficient reasons and extending inhumane treatment amounts to deficiency in service.
32. Further, perusal of the record suggests that the Opposite Parties have failed to furnish any cogent reasons/Deportation Order as promised to the Complainant at the Delhi Airport Counter, despite his repeated requests. It is surprising as to how a reputed International Airline can aboard a passenger and then deny boarding a connecting flight midway his journey without any supporting documents to explain the reasons for taking such drastic measures. It is to be noted further that the Complainant was also subjected to inhumane treatment by the staff of the Opposite Parties in so much so that he was threatened, made to answer immoral questions and was not even allowed to use the washroom. Thus, deficiency on part of the Opposite Parties stands proved beyond doubt.
33. Lastly, we take into consideration the submission of the Complainant that the Opposite Parties overbooked the seats in anticipation of high sales on account of the fair season and have shifted the blame on the ALO to conceal high profiteering, which tantamounts to unfair trade practice. It is to be noted that the Opposite Parties have not placed any evidence on record to show that the seat booked by the Complainant was kept vacant and was not sold to any other passenger. This raises a negative presumption against the Opposite Parties as to flouting the standard practice of aviation industry and breach of contractual obligations .
34. The law on this subject has already been settled by the Hon'ble National Commission, in *First Appeal No.310 of 2008, decided on 22.03.2018 titled*

as *Air France Vs. O.P.Srivastava Dy. Managing Worker Sahara India Pariwar & Ors.*, wherein the Hon'ble National Commission specifically held:

“The practice of overbooking may be a commercially viable international practice being adopted by all the Airlines, probably, to ensure that seats in the flights do not go vacant in the event of no-shows by booked passengers(s) but the same cannot be at the altar of the passengers. Not permitting a passenger, holding confirmed ticket to board a flight, amounts to deficiency of service on the part of an Airline.”

35. Moreover, this Commission in *Appeal No. 824/04* titled as **“Indian Airlines Ltd. Vs Mr. D.G.Sangal”** has inter alia observed as under:

....The practice of most of the airlines of over booking of flights on the premise of maximizing the utilization of seats keeping in view the usual last minutes cancellation by passengers is playing havoc with those passengers who with confirmed status of tickets leave their homes few hours before and reach the airport well in time but are suddenly off loaded for one or the other reason. In our view, once a passenger is issued a ticket with confirmed status he cannot be denied the boarding of the plane on any excuse whatsoever.

....Once a person stands in the queue with confirmation ticket it is the statutory obligation of the service provider to see that he is issued a boarding pass but unfortunately we have come across large number of such cases where the airlines to accommodate some or the other person for the reasons best known to them indulge in over-booking under the guise of maximizing the utilization of seats keeping in

view the last minute cancellation by passengers and in the process off-load the passenger with Confirmed Status. Such a practice is highly unfair and is not a part of contract and amounts to misrepresentation as to the right of the passenger with confirmed status ticket as it is in lieu of the seat that is cancelled that the Airlines can accommodate a waitlisted passengers. In no way the Airlines can deny the boarding of the plane to a passenger in possession of a ticket with confirmed status once he reports at the check-in counter.

It is under legal obligation to provide him the service of boarding in the plane. Reason is simple. It is not for the failure of a reporting by passenger with confirmed status ticket, then the Airlines suffer pecuniary loss and by denying such a passenger right to board the plane, they become unjustly enriched by selling one seat twice over as the Airlines refuse to refund the cost of the ticket to a passenger who has either not cancelled the ticket or not reported at the counter. If it chooses to do so, Airlines has to refund the cost of the ticket as no service provider can usurp the consideration for which it has either not provided the service or the consumer has not availed it. Thus it is only in case of cancellation of a ticket that the over-booked passenger can be accommodated for maximizing the utilization of seats and by sacrificing or abridging the right of a passenger with ticket with confirmed status.”

36. It appears that by offering excuses and blatantly shifting the blame on the ALO, the Opposite Parties are divorced from realities of life or the acute frustration and agony of the passenger who is denied boarding. To deny a person the boarding of the plane is nothing short of callous, tortuous and an oppressive act as it causes immense mental agony, physical discomfort, humiliation and emotional trauma which remains with the person throughout his life. It verges almost to an injustice done to a person for no fault of his.
37. Therefore it is clear from the aforesaid discussion that the Opposite Parties have failed to provide quality services to the Complainant. It was the duty of the carrier to take reasonable care of the passenger, so as to not expose him to such humiliation, unwarranted harassment and mental agony.
38. With these observations, we are of the opinion that the Opposite Parties provided deficient service to the Complainant and therefore, are liable to compensate the Complainant.
39. However, it is also pertinent to mention here that we do not concur with the amount sought as compensation by the Complainant as sufficient material has not been placed on record to justify the total compensation of Rs.55,00,000/-
40. Keeping in view the facts of the present case, we direct the Opposite Party No.1&2 to pay an amount of **Rs. 5,00,000/-** to the Complainant as compensation towards the financial loss suffered on account of deficient services.
41. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party No.1&2 are directed to :
- A. Pay a sum of **Rs. 50,000/-** towards the mental harassment;
 - B. Pay the litigation cost to the extent of **Rs. 50,000/-** to the Complainant.
42. Being guided by the principles as discussed above, in case the Opposite Party No.1&2 fails to pay the entire amount as mentioned in para 40 & 41 of this

judgment on or before **21.08.2023** (i.e. within one month from the date of the present judgment), the entire amount is to be paid alongwith simple interest @ **6% p.a.** calculated from **21.07.2023** till the actual realization of the amount.

43. Application(s) pending, if any, stand disposed of in terms of the aforesaid Judgment.
44. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
45. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)

PRESIDENT

(PINKI)

MEMBER (JUDICIAL)

(J.P. AGRAWAL)

MEMBER (GENERAL)

Pronounced On:

21.07.2023