

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1STFLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002.**

Case No.CC/887/2013

IN THE MATTER OF:

Sandeep Kumar Mishra

...Complainant

Versus

- 1. Indian Railway Catering and
Tourism Corporation Ltd. (IRCTC)**
Registered Office/Corporate Office
9th Floor Bank of Baroda Building,
16, Parliament Street, New Delhi - 110001.
- 2. CCM/NER Railway**
North Eastern Railway
Gorakhpur (UP).

...Opposite Parties

Quorum:

**Ms. Poonam Chaudhry, President
Mr. Bariq Ahmad, Member
Mr. Shekhar Chandra, Member**

**Date of Institution: 01.10.2013
Order reserved on: 31.10.2023
Date of Order :- 04.01.2024**

ORDER

POONAM CHAUDHRY, PRESIDENT

1. The present complaint has been filed under section 12 of Consumer Protection Act, 1986 (in short CP Act) against Opposite Parties (in short OP) alleging deficiency of service.
2. Briefly stated the facts of the case are that Complainant booked a railway ticket for the date of journey of 19.10.2012 for six passengers on 17.10.2012 from Kacheguda (KCG) to Gorakhpur (GKP) in train no. 15024 using IRCTC online ticketing facilities.
3. It is further stated that at the time of booking all passengers were wait listed, after preparation of chart only first three passenger got confirmed who travelled on the ticket while passenger no. 4,5 & 6 were waitlisted and had not travelled.
4. It is also stated that as per railway rules Complainant filed online ticket deposit receipt (in short TDR) for the cancellation and refund for the rest of the passengers who did not travel.
5. As per normal routine TDR refund case is processed in a period of 90 days hence Complainant waited over four month but aggrieved by non-refund in this period wrote an e-mail to the OP-1.
6. It is stated by the complainant that inspite of the repeated reminders, the OP-2 did not pay any heed to the requests of the Complainant as well as

of the OP-1 and the grievances of the Complainant remained unheard and the complainant was left with no other option but to send a legal notice to the OP dated 05.09.2013. The same was received by the opposite parties, however, despite receiving the said legal notice, the opposite parties deliberately neglected and evaded to comply with the same..

7. The complainant alleges that he has been mentally harassed unnecessarily for no valid and cogent reason by the opposite parties.
8. It is stated that the present complainant is a bonafide consumer as defined by clause (d) to sub section (1) of Section 2 of the "Act". The opposite parties agreed to provide the services for which the opposite parties paid as per the terms but the agreed services was not provided/rendered by the opposite parties to the complainant. It is also stated that this Commission has territorial jurisdiction to try, entertain and decide the complaint, as the opposite parties works for gain within the territorial jurisdiction of this Forum, hence, this Forum has got the jurisdiction to try, entertain and decide the present complaint.
9. It is also stated that the present complaint is being filed within the limitation period as prescribed under the law for such complaint and other claim has filed by the complainant before this Forum or any other Forum.
10. It is prayed that OP be directed to make the payment of the TDR reference no- ekt2012101805914138 alongwith interest 18% per annum.

OP be also directed to pay a sum of Rs.2,00,000/- for towards the mental pain, agony, travelling charges and legal cost and other expenses incurred by the complainant.

11. Notice of the complaint was issued to OP, upon which OP entered appearance and filed written statement contesting the case on various grounds inter alia that complaint is not maintainable as OP-1 only provides access to Railway Passenger Reservation System (PRS) to book the train ticket. As soon as the ticket is issued, the fare gets transferred to Railways. The OP-1 and Railway are different entities. There was no deficiency in service on the part of OP-1 as OP-1 has no role in refund cases. The complainant is not entitled for any compensation from OP-1.
12. The complainant thereafter filed rejoinder retreating therein all the averments in the complaint and denying the allegation made in the written statement.
13. Both parties thereafter filed their evidence by way of affidavit.
14. We heard Ld. Counsel for parties and perused the record.
15. It is the case of complainant that complainant is a bonafide consumer. The opposite parties were deficient in service and agreed service was not provided by the opposite parties. Moreover, opposite parties negligent

attitude towards public grievances harassed the complainant for over a year.

16. On the other hand counsel for OP states that the complaint is not maintainable in view of the provision of Section 13 (1) (b), 15 and 28 of the Railway Claim Tribunal Act, 1987 (RCT in short). It is submitted that only the Railway Claims Tribunal has the jurisdiction to entertain and try the complaint seeking refund of the railway fare.
17. It was also argued section 13 and 15 of the Railway claims Tribunal Act, 1987 deals with the provisions of jurisdiction, power and Authority of the Railway claims Tribunal.
18. As regard the arguments of the OP No. 1 that this complaint is not maintainable before this Commission as it would have been filed before the Railway Claims Tribunal, the complainant submits that the OP No. 1 is giving a wrong interpretation of the said Act. It is submitted by the complainant that only such claims are filed before the Railway Claims Tribunal where the cause is due to accident. He, therefore, submits that the complainant has chosen a right forum for adjudicating his grievances.
18. The complainant had booked railway tickets for a particular destination. Since all the tickets could not be confirmed, therefore, some of the

passengers could not travel and asked for refund of money. It is the duty of the Railways to refund the fare amount where the passenger could not avail its services. If the complainant has followed due process for refund, we fail to understand why the amount was not refunded to the complainant. It is, therefore, held that the OP Nos. 1 and 2 are jointly and severally liable to pay/refund the amount to the complainant.

19. We, therefore, direct the OPs to refund to the complainant the amount against TDR reference No. ek12012101805938 paid on 17.10.2012 with in interest @ 7% per annum from the date of payment till realization, within four weeks from the date of receipt of this order, failing which the OPs shall be liable to pay interest at the enhanced rate of 12% per annum. The complainant shall also be entitled to litigation expenses which are assessed to Rs. 25,000/-.

A copy of this order be given to the parties free of cost.

The order be also uploaded in the website of the Commission.

File be consigned to the record room along with a copy of the order.

[Poonam Chaudhry]
President

[Bariq Ahmad]
Member

[Shekhar Chandra]
Member