

Date of Filing:15-02-2021

Date of Order: 01-03-2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION – II, HYDERABAD

P r e s e n t

SRI VAKKANTI NARASIMHA RAO ... PRESIDENT  
SRI V. JANARDHAN REDDY ....MEMBER

FRIDAY, THE 1<sup>ST</sup> DAY OF MARCH, 2024

Consumer Case No.137/2021

BETWEEN:

Khursheed Begum, D/o.Mohammed Abdul Wahed, Aged about 30 years, R/o.13-6-435/C/15, Maruthi Nagar, Langer House, Mehdipatnam, Near Sharada School, Hyderanad-500008. Mobile.no.7013259913, Email ID: nousheen1904 @ gmail.com.  
...Complainant

AND

- 1.India Railway Catering and Tourism Corporation, Rep by its Regional Head, Oxford Plaza, 9-1-129/1/302, 3<sup>rd</sup> Floor, SD Road: Secunderabad, Telangana 500 003.
  2. IXIGO, 2<sup>nd</sup> Floor, Rep by its manager, Veritas Building, Behind IBIS Hotel Sector 53, Golf Course Road, Gurgaon, Haryana -122 002.
- .... Opposite Parties

This complaint is coming before us on this the 19<sup>th</sup> day of February, 2024 in the presence of complainant as a Party in Person and Opposite Party.no.1 is called absent and set exparte and Learned Counsel Mrs.M.A.Madhumathi appearing for Opposite Party.no.2 and on perusal of material papers available on record, having stood over for consideration till this day, the Commission passed the following:

O R D E R

(BY SRI VAKKANTI NARASIMHA RAO, HON'BLE PRESIDENT  
ON BEHALF OF THE BENCH)

This complaint is filed by the complainant under Section 35 of the Consumer Protection Act, 2019 on 15<sup>th</sup> February, 2021 vide SR No. 296 with a prayer to direct the opposite parties to:-

1. Pay an amount of Rs. 1, 00,000/- (Rupees One Lakhs only) towards damages and causing mental agony, inconvenience caused to her.
  2. Award costs of Rs. 15,000/- (Rupees Fifteen Thousand only).
  3. Pass any such other further appropriate order or orders as the commission deemed fit and proper for their deficiency in service.
- The complainant amended the prayer part of the complaint vide separate orders in I.A. No. 260 of 2023 dated: 12.05.2023 and filed amended neat copy of the complaint as hereunder: -
4. Refund Rs. 6,470/- (Rupees Six Thousand Four Hundred and Seventy only) that was paid at the time of booking tickets.
  5. Pay an amount of Rs. 4,589/- (Rupees Four Thousand Five Hundred and Eighty-Nine only) incurred for journey through bus, for their acts of deficiency in service and un-fair-trade practice.
1. The brief averments as made-out under the complaint are that the complainant booked 4 tickets through online App of 2<sup>nd</sup> opp. Party on 10.01.2021 to travel in IRCTC 2<sup>nd</sup> A.C of 1<sup>st</sup> opp. Party Train No. 02704 (Howrah Special Train) from Secunderabad to Vizianagaram on 13.01.2021 for which she received mail stating that the said tickets have been confirmed. She paid an amount of Rs. 6,470/- towards costs of the tickets and confirmed the same with PNR No. 4408147141 on 13.02.2021 reserving seat Nos. 10 to 13 in 2<sup>nd</sup> A.C. compartment of the said train. The departure time of the train No. 02704 from Secunderabad Railway station was 4.55 PM wherein due to covid-19 guidelines they were informed to attend one hour prior to the Railway station and the complainant started her journey from her house at 2.45 PM with her sister and Brother with 8 luggage's and 4 confirmed tickets by booking a Taxi Car from Mehdipatnam to Secunderabad.
  2. While the complainant & her family members waiting in the railway station for the arrival of the train from 2.47 P.M., she had received Electronic Call to her utter shock just one hour before departure of the train stating that the tickets booked by her had been cancelled without assigning any reason for such cancellation.

3. She called many times to the Customer Care Centre for the reasons of the cancellation before the journey but there was no proper response from the opposite parties. Being 13<sup>th</sup> January, 2021 is the Sankranti festival, all transports have been booked for which the complainant and her family members went in shock. Finally with a great difficulty, the complainant and her family members travelled to Vizianagaram in Ordinary Bus incurring huge amount towards travelling expenses. The complainant had not received the tickets costs @ Rs. 6,470/- (Rupees Six Thousand Four Hundred and Seventy only) from the opposite parties which is cancellation of tickets and the complainant and her family members had travelled in a private bus by incurring expenses @ Rs. 4,589/- (Rupees Four Thousand Five Hundred and Eighty-Nine only) with a great difficulty as the opposite party cancelled the tickets just one hour prior to departure of train without assigning any valid reason that amounts to deficiency of service and also adoption of un-fair-trade practice.
4. The complainant approached the opposite parties many times seeking refund of the cancelled ticket amount but they refunded the amount by deducting is nothing but un-fair-trade practice. The complainant suffered a lot of financial loss and caused mental agony due to un-ethical acts upon the part of the opposite parties for which they are held liable for their deficient services and also un-fair-trade practices. As such the present complaint is filed seeking relief as claimed hereinabove.
5. On numbering the complaint, notices were sent to the opposite parties. None appears for the opposite parties despite service of notices for which they were set-ex-parte on 25.03.2021 and posted the matter for Evidence Affidavit of the complainant. Evidence Affidavit of the complainant filed by examining himself as Pw-1 by reiterating the contentions of the complaint and marked Ex.A-1 and Ex. A-2 on 13.07.2022. On number of adjournments the complainant filed her Written Arguments on 21.10.2022 and the matter was heard on 12.12.2022 and posted to 23.12.2022 for judgment.

6. The complainant filed a petition seeking amendment of the complaint at this juncture wherein notice was ordered to the Respondents/ Opp. parties. Smt. M.A. Madhumathi, Advocate, filed Vakalath for Respondent No. 2/ opposite party No. 2 and Sri L. Vijaya Kumar, Legal Consultant of 2<sup>nd</sup> Respondent and opposite party No. 2 present.
7. Sri K. Srinivasa Rao, Advocate filed vakalath for Respondent No. 1 along with counter in I.A. No. 260 of 2022. On hearing both the counsel on record the I.A. No. 260 of 2022 was allowed and neat copy was ordered to be filed by carrying-out the consequential amendments in the complaint for which the complainant carried-out amendment in the complaint and neat copy filed on 15.06.2023 wherein a Fresh notice was ordered to both the opposite parties.
8. Sri K. Srinivas Rao, Advocate for opposite party No. 1 filed a memo on 20<sup>th</sup> April, 2023 in I.A. No. 260 of 2023 is taken on record in main CC and the matter posted to 25<sup>th</sup> August, 2023 for filing Written Version of the opposite party No.1. Complainant is directed to send all relevant material papers to 1<sup>st</sup> opposite party on or before 14<sup>th</sup> August, 2023 and file proof of service for which the complainant complied the same by serving Material papers to the opposite party No. 1. The matter was posted to 11.09.2023 for Written Version of the opposite parties. The Opposite party No. 2 filed Written Version on 11.09.2023 which extracted in brief as hereunder: -
9. All the allegations made under complaint are denied by this opposite party except those that are specifically admitted hereunder. The present complaint is misconceived, based on wrong facts, vexatious and has been filed with a mala fide intention wherein the complainant failed to show any liability on the part of answering opposite party. Upon a request received from a customer, the answering opposite party forwards the same to the concerned service providers through the software embedded on Answering opposite party's web portal or mobile application and upon receiving the confirmation from the concerned service providers, confirmed bookings / tickets are shared with respective

customers. No deficiency in service on the part of the 2<sup>nd</sup> opposite party is made-out as envisage under section 2 (11) of Consumer Protection Act, 2019 for which the complaint is liable to be dismissed.

10. The present complaint is not maintainable against the 2<sup>nd</sup> opposite party as it holds no liability for any loss, direct or incidental due to any change in the details or cancellation of the tickets by the concerned service provider. The complainant had entered into a contract with the Answering opposite party by consenting to the terms of and conditions of the User Agreement by which the Consumers / the complainant are bound.
11. As no cause of action arose against the 2<sup>nd</sup> opp. Party, the complaint is liable to be dismissed. On bear perusal of the complaint, the complainant has his grievances only against the 1<sup>st</sup> opposite party but not with the 2<sup>nd</sup> opposite party for which the claim against the 2<sup>nd</sup> opposite party is not maintainable. No specific allegation against the 2<sup>nd</sup> opposite party and moreover the opposite party No. 2 is a facilitator has nothing to do with the allegations pertaining to the cancellation of the said tickets and the refund in question can only be initiated against the 1<sup>st</sup> opposite party. The answering opposite party arrayed as wrong party to the proceedings under the complaint for which the complaint is liable to be dismissed against the 2<sup>nd</sup> opp. Party.
12. As the opposite party No. 1 not filed their Written Version the matter posted to 12.09.2023 finally for written version of opposite party No. 1. As the opposite party No. 1 called absent and not filed their written version despite completion of 45 days statutory period, they were set-ex-parte vide docket orders dated: 12.09.2023 and the matter has been posted to 25.09.2023 for Evidence Affidavit of the complainant and marking her documents wherein the complainant marked Ex. A-3 on her behalf on 25.09.2023.
13. The matter was posted to 16.10.2023 for Additional Evidence of opposite party No. 2 which filed on 15.11.2023 by examining Sri Vaibhav Agarwal, who is its authorized representative as Dw-1 and Ex. B-1 marked on their behalf.

14. Written Arguments of the 2<sup>nd</sup> opposite party was filed on 1<sup>st</sup> February, 2024. No Written arguments filed by the complainant. Heard for the complainant. The complainant orally represented that the refund amount done by the opposite parties is pertains to earlier tickets booking amount but not the subject tickets amount wherein the 2<sup>nd</sup> opposite party counsel sought time for clarification in this regard. Heard for both parties on 19.02.2024.
15. Perused the record. Considering the facts of the case, the points to be answered for determination are:-
1. Whether any deficiency of service is made-out against the opposite parties as claimed under the complaint?
  2. Whether the complainant is entitled for the relief sought?
  3. To what relief?

POINT NO. 1 AND 2:-

1. It is an admitted fact that the complainant booked 4 tickets through online App of 2<sup>nd</sup> opp. Party on 10.01.2021 under Ex. A-1 to travel in IRCTC 2<sup>nd</sup> A.C of 1<sup>st</sup> opp. Party in Train No. 02704 (Howrah Special Train) from Secunderabad to Vizianagaram to be travelled on 13.01.2021.
2. It is also an admitted fact that she received mail stating that the said tickets have been confirmed on 10.01.2021 under Ex. A-1. She paid an amount of Rs. 6,470/- (Rupees Six Thousand Four Hundred and Seventy only) for the costs of the 4 tickets and confirmed the same with PNR No. 4408147141 under Ex. A-1 & Ex. A-2 by reserving seat Nos. 10 to 13 in 2<sup>nd</sup> A.C. compartment of the said train to be travelled on 13.02.2021. It is not in dispute that the departure time of the train No. 02704 from Secunderabad Railway station was 4.55 PM.
3. It is not in dispute that due to covid-19 guidelines the complainant was informed to attend one hour prior to the Railway station. It is also not in dispute that while the complainant & her family members waiting in the railway station for the arrival of the train from 2.47 P.M., she had received Electronic Call just one hour before departure of the train stating that the tickets booked by her had been cancelled

without assigning any valid reason for such cancellation. It is an admitted fact that the complainant pleaded in her pleading under Para No. 11 of the complaint that the 1<sup>st</sup> opp. party refunded the amount by deducting Rs. 470/-.

4. While filing counter in I.A. No. 260 of 2022, the 1<sup>st</sup> opposite party filed proof of refund made to the complainant that was marked as Ex. B-1 by the 2<sup>nd</sup> opposite party while participating subsequent proceedings of carrying-out amendment of the complaint.
5. Admittedly, the dispute in between the complainant and 1<sup>st</sup> opposite party for non-refund of Rs. 470/- (Rupees Four Hundred and Seventy only) and abrupt cancellation of confirmed tickets just one hour prior to departure of train while the complainant has been waiting on the Plot-form at Secunderabad Railway station and further claimed that the abrupt cancellation acts upon the part of the 1<sup>st</sup> opposite party are amounts to deficiency in service that leads to adoption of un-fair trade practice that caused a lot of sufferance and inconvenience to her and her family members to reach their destination while booking private bus at that peak hour by paying an amount of Rs. 4,589.60 (Rupees Four Thousand Five Eighty-Nine and paisa Sixty only) under Ex. A-3.
6. On perusal of Ex. A-3, it is very clear that the Trip to Hyderabad to Vizianagaram that was booked on 13<sup>th</sup> January, 19.15 hours and Boarding point is Lakidi-Ka-pool. Ex. A-3 concluded that the complainant with her family members travelled to Vizianagaram in alternative services on 13.01.2021 due to abrupt cancellation of Ex. A-1 tickets by the 1<sup>st</sup> opposite party that caused her and her family a lot of trouble, mental agony and inconvenience due to the deficient and un-fair acts upon the part of the 1<sup>st</sup> opposite party. As such we concluded that it is clear case of deficiency in service upon the part of the 1<sup>st</sup> opposite party that amounts to adoption of un-fair-trade practice for which the 1<sup>st</sup> opp. Party is held liable. As the 2<sup>nd</sup> opposite party is a facilitator, we are not inclined to fasten any liability upon it.

7. As no valid reasons has been assigned by the 1<sup>st</sup> opposite party for abrupt cancellation of the confirmed tickets under Ex. A-1 just prior to one hour departure of the train, and the 1<sup>st</sup> opp. Party refunded the amount of Rs. 6,000/- on 15<sup>th</sup> January, 2021 under Ex. B-1 by deducting Rs. 470/- (Rupees Four Hundred and Seventy only) without assigning any valid reason for such deduction, we are under the considered view that it is just and reasonable to order considerable compensation to be payable to the complainant for inconvenience and hardship caused to her and her family members apart from refund of deducted amount of Rs. 470/- (Rupees Four Hundred and Seventy only) with interest @ 9% w.e.f. 13<sup>th</sup> January, 2021 i.e. date of cancellation of tickets, till realization.

POINT NO. 3:-

In the result, the complaint is allowed in part directing the 1<sup>st</sup> opposite party to:-

1. Refund Rs. 470/- (Rupees Four Hundred and Seventy only) to the complainant with interest @ 9% p.a. w.e.f. 13<sup>th</sup> January, 2021 till realization.
2. Pay Rs. 15,000/- (Rupees Fifteen Thousand only) to the complainant towards compensation for mental agony and physical trauma and inconvenience caused to the complainant and her family members.
3. Pay Rs. 5,000/- (Rupees Five Thousand only) to the complainant towards costs of the litigation.
4. Rests of the claims made under the complaint are disallowed. Complaint against the 2<sup>nd</sup> opposite party is dismissed.
5. Time for compliance is 45 days from the date of receipt of this order.
  - Applications pending if any, stand disposed of in terms of the aforesaid order.
  - A copy of this judgment be provided to all parties free of cost as mandated by the Consumer Protection Act, 2019.



- The judgment be uploaded forthwith on the website of this commission for the perusal of the parties.
- File be consigned to record room along with copy of this judgment.

Dictated to Typist, typed by her, corrected and pronounced by us in the open Commission today the 1<sup>st</sup> day of March,2024.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

Witnesses examined for Complainant:-

Ms.Khursheed Begum (PW1)

Witnesses examined for Opposite party.no.1:-

--Set Expart --

Witnesses examined for Opposite party.no.2:-

Sri Vaibhav Agarwal (DW1)

Exhibits marked on behalf of the Complainant: -

Ex.A1: is the copy of confirm email ticket with PNR, dt.13.1.2021

Ex.A2: is the copy of IXIGO electronic reservation slip

Ex.A3: is the copy of confirmed ticket messages

Exhibits marked on behalf of the Opposite party.No.1:-

--Set Exparte--

Exhibits marked on behalf of the Opposite party No.2:-

Ex.B1: is the copy of refund receipt of the opposite

Party

MEMBER

PRESIDENT