

Date of Filing: 20.06.2023

Date of Order: 28.02.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD

P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. D. MADHAVI LATHA, MEMBER

On this the Wednesday, the 28th day of February, 2024

C.C.No. 266/2023

Between:-

1. Mr. Ramakrishnan Venkatesh Vadakanjery,
S/o Sri. V.L. Ramakrishnan, aged about 63 years,
R/o: H.No. 9-1-63/64 & 65, Aurora Apartments,
S.D. Road, Secunderabad.
2. Mrs. Geetha Shankernarayana,
W/o Sri. V.R. Venkatesh,
Aged about 62 years,
R/o: H.No. 9-1-63/64 & 65, Aurora Apartments,
S.D. Road, Secunderabad.

....Complainants

AND

1. M/s. Thomas Cook (India) Limited,
A wing, 11th Floor, Marathon Futurex,
N.M. Joshi Marg, Lower Parel,
Mumbai – 400013.
Rep. by its Managing Director.
2. M/s. Thomas Cook (India) Limited,
6-1-57, Nasir Arcade, Saifabad,
Hyderabad – 500004,
Rep. by Branch In-charge.

....Opposite Parties

Counsel for the Complainant : M.R.B. Manikandan
Counsel for the Opposite parties : M/s. A. Rajashekhar Reddy

O R D E R

(By HON'BLE MRS. D. MADHAVI LATHA, MEMBER
on behalf of the bench)

1. This complaint is filed U/ SEC. 35(1) of The Consumer Protection Act, 2019 requesting the Commission to direct the opposite parties
 - i. To refund a sum of Rs.1 lakh to the complainants paid by them towards the tour package or alternatively issue a credit note to the same amount in favour of complainants for them

to use in future as per the cancellation policy of the opposite party.

- ii. Pay a sum of Rs.1 Lakh towards compensation for the mental agony and anxiety suffered by the complainants due to the refusal of the opposite party to refund the above amount.
- iii. To award costs and to pass other reliefs as may be deemed fair by this Commission.

Brief facts of the complainant are as follows:

2. The complainants, V.R. Venkatesh and S. Geetha had a long plan to go on a trip to the Hill Country of Bhutan, attracted by its scenic beauty and culture. They contacted the opposite party, an online travel agent, who claims to be of international repute for offering package holidays worldwide. The opposite party quoted a package including hotels, sightseeing, meals, etc., for a total of Rs. 1,00,000/- for two persons, with details provided for their trip from April 5th to April 13th, 2023. Agreeing to the same complainants paid total tour package amounts on 9-3-2023 and 25-3-2023 and the opposite party issued a tour confirmation voucher dt:31-03-2-23 (Ex. A 1, A2 &A3). The complainants booked flight tickets paying about Rs. 29,000/- with Indigo Airlines for travel from Hyderabad to Bagdogra, Bhutan, departing on 05-04 -2023 and returning on 12-04-2023(Ex A4&A5). However, on 03-04-2023, complainant No. 1 fell ill, subject to various tests at Vijaya Diagnostic Centre as prescribed by the doctor and was diagnosed with a urinary tract infection (Ex. A8), advised by doctors not to travel for the next 10 days and also to rest. Having no other option, the complainants cancelled their tour, informing both the airline and the opposite party by enclosing the medical reports and requesting for refund of the amounts paid towards airfare and the tour package (Ex. A6&A7&A8). Indigo Airlines refunded their airfare due to the medical emergency, while the opposite party declined to refund the tour package amount, citing their cancellation policy (vide their email dt:12-03-2023 Ex.A7). Despite the complainants' situation being beyond their control, the opposite party refused any refund, contrary to their own policy which promised refunds in cases of health issues, which forms part of the brochure issued by the opposite party under the caption of 'Explore Bhutan (Via Bagdogra) land only', it is mentioned "also note that in case of any restriction/health issue (guest gets covid +ve) we will be avoiding charging any cancellation basis documents been shared. The credit note for the same amount will be issued which guests can use in the future. During any

amendment/cancellation - airline cancellation (wherever application) will be charged as per airline policies. The complainants allege this is unfair and unreasonable, for no fault of the complainants, the opposite party's obligation to accommodate customers in unforeseen circumstances. They state that the opposite party's refusal to refund amounts to unfair business practices, and thus, they seek the intervention of the Commission. Hence this complaint.

3. The authorized signatory of the Opposite Party Sandeep Mudigonda-Manager, has submitted a written version denying all allegations of the Complaint and submitted that the complaint is neither maintainable in law nor facts. The Opposite Party states that the complaint is based on incorrect and should be dismissed in limine. They contend that they have acted in good faith and with due diligence at all times, without any negligence or irregularity. They submit that the complaint lacks grounds for jurisdiction and should be dismissed with costs. They request to decide upon the complaint's maintainability as a primary issue due to an alleged voluntary breach of terms and conditions by the Complainants. The Opposite Parties submitted that they are a leading travel and holiday organizer in India/who have gained a considerable reputation not only in India but also overseas for organizing and executing holidays and tours with utmost care and precision And they are only the organizers/facilitators and therefore they do not have control over the third party vendors or their policy guidelines, terms and conditions or they own/operate any airlines, shipping company, cruise lines, coach, hotel, transport, or any other services including approval or rejection of Visas etc, and all such services are depended upon the third parties on their own terms & conditions and same is clearly mentioned in the terms and conditions of the booking form, which same were duly read, understood and accepted by the Complainant No.1 & 2 by acknowledging the same. It is submitted that complainant No.1 contacted the opposite party no.2 in respect of the inquiry about the tour of Bhutan, for which the staff of the Opposite Party No.2 provided the tour itinerary and quotation of the Bhutan Tour wherein departure date is on 05th April 2023 and arrival date as 12th April 2023. It is submitted that as stated by the complainants it is true and correct that the complainant agreed to the terms and conditions of the tour and made payment for the tour. they request

the court to decide upon the complaint's maintainability as a primary issue. The email dated 09.03.2021 exchanged with Complainant No.1 (Ex. B.2). The copy of the Tour Brochure which was provided to the complainant containing terms and conditions of the tour (Ex. B No.3). The complainant paid Rs.30,000/- on 09.03.2023 and paid Rs 70,000/- on 25.03.2023 through online to the Opposite Party. The Copy of the Receipt Voucher which was issued to the complainant for their payment dated 09.03.2023 and 25.03.2023 (Ex. B.4 and Ex. B 5). The Opposite Party made all the arrangements for the complainant by booking the hotel. The Copy of the Tour Confirmation Voucher which includes hotel vouchers dated 31.03.2023 (Ex. B 6). It is submitted that the Opposite parties have suggested the complainants to avail insurance cover as a precautionary measure for the safety of the complainants during the tour itinerary starting from 10.04.2023 to 12.04.2023 and the said insurance covered from 04.04.2023 to 13.04.2023 which is opted by the Complainants after the initiation of the opposite party (Ex. B 7). It was stated that the complainant's averments that he is required to undergo medication for some time and also rest for the next 10 days and that he was advised not to travel even a small distance, the same that there is no such iota of advisory any as alleged by the Complainants nor certified by any registered medical practitioner which is relied upon by the Complainant in the medical tests report and prescription of Doctor submitted by the Complainant are denied as untrue and incorrect and put to strict proof for the want of knowledge. It is submitted that the opposite party received an email from Mr.Rohit about 1:26PM on 04.04 2023 by attaching medical tests report and prescription of Doctor i.e., before a few hours (half-a- day) for the boarding and tour itinerary (Ex. B8).The communication between Indigo Airlines and the Complainant, is denied for the want of knowledge. It is submitted that Opposite parties were given to understand that in general all the Air- lines operators provides reservation of tickets with an option of cancellation with full refund provided the customer purchases his Airline ticket with the said option at additional premium, as such the Complainants cannot infer or compel these opposite parties to forgo their terms and conditions and seek full refund of the tour cancellation which is against the policy as agreed between the parties as per the Tour

itinerary (Ex. B 2). It is submitted that as per the terms and conditions of the tour, the last minute cancellation was subject to 100% penalty as the same was clearly stated in the Tour Brochure, which can be referred to page no.9 of document No.5 in Tour Confirmation Voucher. The extract of these conditions are reproduced herein below. "When a cancellation is made up to 30 days prior to date of departure- Cancellation Charges per person Initial deposit amount; Between 15 days to 29 days prior to departure 50% of Tour Cost OR Initial deposit amount- Whichever is higher; Less than 14 days prior to departure 100%. Also, note that in case of any restriction/health issue (guest gets covid +ve) we will be avoiding charging any cancellation basis documents been shared. The credit note for the same amount will be issued which guest can use in future. During any amendment/ cancellation – airline cancellation (wherever applicable) will be charged as per airline policies". It is submitted that which is clearly mentioned above only in Covid +ve cases, there will be no cancellation charges and the credit note will be issued to use the said amount. Whereas, in case of the complainant, since it was not the case of Covid+ve, they were not exempted from the cancellation penalty and were liable for the cancellation charges. Hence, the complainant was rightly informed that they were not entitled to any refund amount. It is submitted that since the Services (Hotels, sightseeing, etc.) were already booked for the complainants hence it was not possible to refund the entire amount to the complainant. The complainant did not disclose the true and correct facts before the Hon'ble Commission. The staff of the opposite party considering the Complainant medical emergency have bonafidely negotiated with the Service provider for waiver of the cancellation charges as it is unexpected medical advice and managed to offer 75% of the amount. however, the Complainant Mr. Rohit who was communicating vide email dated 18.07.2023 with the opposite party made a demand for a total refund of Rs.1,00,000/- along with advocate charges of Rs.15,000/- which was denied by the Opposite party (Ex. B 9). It is submitted that the levy of the cancellation charges does not amount to any unfair trade practice or deficiency of service as the Complainants and the Opposite parties are bound by the agreed terms and conditions which are borne by the record and acknowledged by the Complainants. The

Complainants are well educated and have full information about the tour itinerary as such they can't contradict with a full refund demand made half a day before the tour itinerary which is against the terms and conditions and beyond the limits of these Opposite parties. As all service providers like railways etc levy cancellation charges on the consumers so it does not amount to a deficiency of service as alleged or at all. For the above reasons, opposite party prayed the Commission to dismiss the Complaint with exemplary costs.

4. The complainants reiterating the averments of the complaint filed affidavit in evidence and marked the documents Ex.A1 to A9. The Manager of Opposite Party No.1 & 2 reiterated the version filed evidence affidavit and marked documents Ex. B1 to B9 on their behalf. Both party counsels filed their respective written arguments. Heard the counsels.

5. Now the points for consideration in this case are:

- i. Whether there is any deficiency/negligence on the part of Opposite Parties in rendering services to the complainants?
- ii. Whether the complainant is entitled to the claim as prayed for. If so, to what relief?

6. Point No.1:

- 6.1. The crux of the dispute lies in the interpretation of the opposite party's cancellation policy in the context of the complainant's medical emergency. The opposite party did not dispute the facts of the present complaint that the complainants engaged the services of the opposite party, an online travel agent, for a trip to Bhutan. The tour package offered by the opposite party included accommodation, sightseeing, meals, and other amenities, with a total cost of Rs. 1,00,000/- for two persons. The scheduled dates for the trip were from April 5th to April 13th, 2023. In compliance with the agreement, the complainants made two separate payments towards the tour package. The first payment of Rs. 30,000/- was made on 9-3-2023, followed by a second payment of Rs. 70,000/- on 25-3-2023. However, flight tickets were booked separately by the complainants with Indigo Airlines for Rs. 29,000/- for travel

from Hyderabad to Bagdogra, Bhutan, departing on 05-04-2023 and returning on 12-04-2023. It is also not in dispute that before the scheduled departure date, on 03-04-2023, complainant No. 1 fell ill and was diagnosed with a Urinary Tract Infection. Which caused them unfit to travel for the next 10 days, as advised by a medical professional. Consequently, the complainants canceled their tour, providing medical reports to substantiate their claim, and requested refunds for both the airfare and the tour package. While Indigo Airlines refunded the airfare due to the medical emergency, the opposite party declined to refund the tour package amount, citing their cancellation policy.

- 6.2.** Whereas, the opposite parties contended that the cancellation charges, as stipulated in the terms and conditions of the tour package, are binding upon the complainants. They argue that since the complainants canceled the tour within a short period (1/2 day) before the departure date and were subject to cancellation charges as per the terms and conditions of the tour, which stated that last-minute cancellations were subject to a 100% penalty unless it was a Covid-positive case, in which case a credit note would be issued. It is the contention of the opposite party. However, considering the complainant's medical emergency has negotiated with the service provider for waiver of cancellation charges as it is unexpected medical advice and offered 75% of the cancellation charges.
- 6.3.** The complainants vehemently argued that the opposite party's refusal to refund the tour package amount, despite their own policy of promising refunds in cases of health issues, constitutes unfair business practices and that the opposite party's interpretation of their cancellation policy, specifically regarding health issues, is flawed. The complainants state that while the policy mentions Covid-positive cases mentioned in the bracket, it can generally be interpreted to encompass any pressing health issue, rather than being limited solely to Covid-positive cases. They contend that the opposite party's assertion that the clause applies exclusively to COVID-19-positive cases contradicts their own terms and will not hold any water. Furthermore, the complainants firmly believe that their

situation falls within the scope of the exceptions outlined in the opposite party's policy regarding health-related cancellations.

- 6.4.** The contention of the opposite party that an advised not to travel even a small distance from the doctor to substantiate its plea, is denied by the complainant submitting that every advice would not be in writing. The complainant argues they have requested cancellation 1 day before the scheduled travel and did not utilize any services of the opposite parties (Ex. A3), however, Ex. B9 the offer of the opposite party of 75% of the amount is developed after the filing of the complaint.
- 6.5.** As a special case considering the medical issues of complainant No.1, it is noticed in the said mail it was mentioned that initially denied, post escalating the matter internally and involving the head of the department of the OP finally they were able to get a waiver from their on-ground local partners, which they have gone beyond the terms and conditions to help the complainants. However, the complainant Mr. Rohit who was communicating with the opposite party made a demand for a total refund of Rs. 1,00,000/- along with advocate charges of Rs.15,000/- which was denied by the OP. As opposite parties have all along acted as per the terms and conditions of the Booking Form which is a binding contract between both the parties.
- 6.6.** Having perused the facts and material record placed before us and the submissions made by both parties it is evident that the complainants' cancellation of the tour was necessitated by an unforeseen medical emergency, namely, the diagnosis of a Urinary Tract Infection of complainant No. 1. This medical condition rendered unfit to travel, thus warranted the cancellation of the tour. While the opposite party's cancellation policy does outline provisions for cancellation charges, it is pertinent to note that the policy also contains exceptions for health-related cancellations. The clause, though mentioning COVID-19 positive cases, can reasonably be interpreted to encompass any pressing health issue that impedes travel plans. Moreover, the offer of a 75% refund made by the opposite party after the filing of the complaint does not absolve them. Considering the foregoing, the refusal of the opposite party to

refund the tour package amount, despite the complainant's medical emergency and their acts of not resolving the issue of adherence to the cancellation policy's provisions, amounts to deficiency in service and unfair trade practice. The opposite parties to show their bonafide ought to have deposited the said amount in the commission if they are ready with said proposal. Failure on their part to do that makes them liable to pay the compensation.

- 6.7.** In view of the Booking Form and negotiations offered by the opposite parties, this Commission is of the considered opinion that it would be just and proper to direct the opposite parties to refund 75% of the Rs. 1,00,000/- paid by the complainant i.e. RS.75,000/- or in alternate issue a credit note to the same amount in favour of complainants for them to use in future as per the cancellation policy of the opposite party. However, the opposite parties admittedly responded only after filing the instant complaint and are liable to pay compensation of Rs.10,000/- and the costs of Rs. 5,000/- towards legal expenses for constraining the complainants to approaching this Commission for redressal of their grievance. The point is answered accordingly.

7. Point No.2:

- 7.1.** In the result, the complaint is partly allowed and the opposite parties are directed to refund 75% of the Rs. 1,00,000/- (Rupees One Lakhs Only) paid by the complainant i.e. Rs.75,000/- (Rupees Seventy Five Thousand Only) or in alternate issue a credit note to the same amount in favour of complainants for them to use in future as per the cancellation policy of the opposite party. further, the opposite party is directed to pay compensation of Rs.10,000/ - (Rupees Ten Thousand Only) besides costs of Rs.5,000/-(Rupees Five Thousand Only). The time for compliance is 45 days from the date of receipt of this order.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 28th day of February, 2024.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Mr. Ramakrishnan Venkatesh Vadakanjery

WITNESS EXAMINED FOR THE OPPOSITE PARTIES

(DW1) Sandeep Mudigonda.

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of Tour confirmation voucher issued by the opposite party dated 31.03.2023.
- Ex.A2 Copy of Initial payment made by complainants dated 09.03.2023.
- Ex.A3 Copy of receipt voucher for balance payment issued by the opposite party and acknowledgment mail dated 25.03.2023.
- Ex.A4 Copy of Air ticket to Bagdogra dated 23.03.2023.
- Ex.A5 Copy of Air ticket to Hyderabad dated 10.03.2023.
- Ex.A6 Copy of email exchanged between complainant and Airlines dated 04.04.2023.
- Ex.A7 Copy of email exchanged between complainant and the opposite party dated 04.04.2023, 08.04.2023 & 12.04.2023.
- Ex.A8 Copy of Medical reports, Tests Reports pertaining to complainant No.1 dated 03.04.2023.
- Ex.A9 Copy of Brochure of Opposite party dated 03.04.2023.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTIES

- Ex.B1 Copy of authorization letter dated 18.07.2023.
- Ex.B2 Copy of email correspondence extract between complainant No.1 and Opposite party dated 09.03.2023 & 28.03.2023.
- Ex.B3 Copy of Tour Brochure (Terms and conditions) dated 09.03.2023.
- Ex.B4 Copy of receipt voucher -I dated 09.03.2023.
- Ex.B5 Copy of receipt voucher -II dated 25.03.2023.
- Ex.B6 Copy of Tour Confirmation voucher dated 31.03.2023.
- Ex.B7 Copy of Insurance policy dated 28.03.2023.
- Ex.B8 Copy of email extract received from complainant (Medical reports) dated 04.04.2023.
- Ex.B9 Copy of email communications dated 11.07.2023.

MEMBER

PRESIDENT

PSK
READ BY:-
COMPARED BY :-