

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND  
DEHRADUN

**FIRST APPEAL NO. 47 / 2023**

M/s KLM Royal Dutch Airlines  
11<sup>th</sup> Floor, Tower – C  
Building No. 8, DLF Cyber City  
Gurgaon – 122002, Haryana

..... Appellant / Opposite Party

Versus

Sh. Sushil Kumar  
R/o Village Ganga Bhogpur, Tehsil Yamkeshwar  
District Pauri Garhwal – 249306, Uttarakhand

..... Respondent / Complainant

Sh. Tejasvi Chaudhry, Learned Counsel for the Appellant  
Smt. Bhawna Joshi, Learned Counsel for Respondent

**Coram: Hon'ble Mr. Justice D.S. Tripathi, President**  
**Mr. Udai Singh Tolia, Member-II**

**Dated: 19/08/2023**

**ORDER**

**(Per: Justice D.S. Tripathi, President):**

This appeal under Section 41 of the Consumer Protection Act, 2019 has been preferred against the impugned judgment and order dated 01.02.2023 passed by the District Consumer Disputes Redressal Commission, Pauri Garhwal (in short "The District Commission") in consumer complaint No. 18 of 2022; Sh. Sushil Kumar Vs. KLM Airlines, whereby the consumer complaint was allowed ex-parte against the appellant – opposite party, directing the appellant to pay an amount of Rs. 90,035/- to the respondent – complainant towards financial loss for not being able to visit Bogota, Columbia together with Rs. 7,00,000/- towards mental agony and Rs. 20,000/- towards litigation expenses, in all, Rs. 8,10,035/- within a period of one month from the date of impugned judgment and order, failing which the

respondent – complainant was further held entitled to interest @6% p.a. on the aforesaid amount payable from 29.06.2022, i.e., the date of institution of the consumer complaint till the date of impugned judgment and order.

2. The facts of the case, in brief, as stated in the consumer complaint, are that on 20.10.2021, the respondent – complainant was scheduled to board the international flight of appellant – opposite party from Indira Gandhi International Airport, New Delhi vide ticket No. 0742438960704, flight No. KL0872 and PNR No. ORPDU2. The final destination of the flight was Bogota, Republic of Columbia. The complainant arrived at the airport with valid documents, but inspite of that, the Liaison Officer stopped the complainant from boarding the flight, for which no reason was disclosed to the complainant and denied the boarding pass. The appellant (Airlines) refunded the cost of flight ticket, but the complainant lost the money spent on travel insurance; visa processing fee; travel shopping; gifts etc. The action on the part of the Airlines amounts to racial profiling of the complainant and is in violation of Article 15 of the Constitution of India. On account of the said incident, the complainant suffered stress; anxiety and mental trauma as well as sleep deprivation. The complainant visited a Psychiatrist for treatment. The complainant's plan to visit the Republic of Colombia was shattered. The complainant is a Yoga teacher and his successful visit would have opened job opportunities for him. The complainant's host and friends at Bogota were eagerly waiting for his arrival. The complainant had plan to learn Spanish language. The matter was several times reported vide different channels. Since the Airlines did not compensate the complainant for the loss undergone by him, consumer complaint was set in motion by the complainant before the District Commission.

3. The District Commission issued notice to the appellant, who was opposite party before the District Commission, but the appellant did not turn up before the District Commission and consequently, on the basis of tracking report of the notice, the District Commission, per order dated 05.09.2022 directed to proceed the consumer complaint ex-parte against the appellant and went on to allow the consumer complaint vide impugned judgment and order dated 01.02.2023 in the above terms. Feeling aggrieved, the appellant has come up in this appeal.

4. We have heard arguments advanced by learned counsel for the parties and perused the record.

5. Learned counsel for the appellant submitted that the impugned judgment and order was passed ex-parte by the District Commission and the appellant did not get opportunity to file the written statement to rebut the averments made in the consumer complaint. His further submission is that the appeal should be allowed and the matter should be remanded back to the District Commission for decision afresh on merit, after providing proper opportunity of hearing to both the parties. Learned counsel also submitted that the appellant did not receive the notice issued by the District Commission in the consumer complaint and the appellant was not duly served. Learned counsel further submitted that the principle of natural justice envisages that every party has a right to be heard.

6. We find substance in the arguments advanced by learned counsel for the appellant. We find from record that impugned judgment and order has been passed by the District Commission ex-parte against the appellant. The appellant did not get opportunity to file written statement before the District Commission against the

consumer complaint filed by respondent – complainant. It is settled principle of law that all the parties involved in the matter in question should get proper opportunity of being heard. It is further settled principle of law that substantial justice should prevail over technical one. It would not be out of place to mention here that in ground No. B of the grounds of appeal given in the memo of appeal, the appellant has specifically stated that the appellant was not duly served and further that the appellant did not receive the notice in the matter.

7. We have noticed that the appellant could not file written statement before the District Commission and the appellant did not get opportunity for adducing evidence on affidavit. Appellant was deprived from getting opportunity of hearing. In the case of **Topline Shoes Ltd. Vs. Corporation Bank** reported in **II (2002) CPJ 7 (SC)**, Hon'ble Apex Court has observed that "it is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time frame to file reply, as a guideline, and then to exercise its discretion as best it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind the principle of natural justice as well."

8. Thus, we are of the view that the consumer complaint should be decided on its merit, after providing opportunity of hearing to both the parties. Therefore, we set aside the impugned judgment and order dated 01.02.2023 passed by the District Commission. The appellant shall file the written statement before the District Commission on or before the date fixed for appearance of the parties before the District Commission and thereafter the District Commission shall afford a reasonable opportunity to the parties to adduce evidence in support of their case.

9. For the reasons aforesaid, this appeal succeeds and is hereby allowed. Impugned judgment and order dated 01.02.2023 passed by the District Commission is set aside. The matter is remanded back to the District Commission for deciding the consumer complaint on its merit. The parties are directed to appear before the District Commission on 18.09.2023, by which date, the appellant shall file the written statement before the District Commission. The District Commission shall provide proper opportunity of hearing to both the parties and proceed to decide the consumer complaint expeditiously according to law. The amount deposited by the appellant with this Commission, be released in its favour. No order as to costs. Copy of the order be sent to the District Commission forthwith.

10. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

**(U.S. TOLIA)**  
Member-II

**(JUSTICE D.S. TRIPATHI)**  
President

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