

Date of Filing : 24.12.2022

Date of Order : 06.07.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL

COMMISSION-III, HYDERABAD

Present

SRI M. RAM GOPAL REDDY, PRESIDENT

SMT. D.SREEDEVI, MEMBER

SMT. J.SHYAMALA, MEMBER

Thursday the 6th day of July' 2023

C.C. No.830 of 2022

Between:

Sri D.V. Manohar,
S/o. Late D. Appa Rao,
Aged about 69 years, Occ: Business,
R/o. Villa No.31, Whisper Valley, H.S. Darga,
Hyderabad - 500008.
Ph.No.9849038717.

.....Complainant

And:

M/s. Go Airlines (India) Limited,
C1, Wadia International Centre (WIC),
Pandurang Budhkar Marg,
Rep. by its Authorized Signatory,
Worli, Mumbai- 400025.

....Opposite Party

Counsel for the Complainant : Sri A.V. Dhanamjaya Rao, Advocate
Counsel for the Opposite Party : Sri Anjaneyulu VUSSR, Advocate.

ORDER:

(PER SMT. J. SHYAMALA, MEMBER, ON BEHALF OF THE BENCH)

1. The Complainant filed this complaint under section 35 of the Consumer Protection Act, 2019, praying to direct the opposite party:

- a) To pay an amount of Rs.13,956/- which the Complainant paid extra to the other airlines in view of cancellation of flights by the Opposite Party.
- b) To pay the damages of Rs.5,00,000/- for causing mental agony, stress and unnecessary inconvenience.
- c) To award costs.
- d) And to pass such other relief or reliefs as this Hon'ble Commission may deem fit and proper in the circumstances of the case.

2. The case of the complainant in brief is that, the complainant intended to go to Maldives during December, 2021 for holiday trip and booked airline tickets for his entire family of four members through the opposite party well in advance on 31.10.2021. Accordingly, the Opposite Party issued the tickets and 'confirmed' vide ticket PNR No.U6Q1RS, and

travel details from Hyderabad to Male by flight No.G8 1533 on 26.12.2021 and return ticket through flight No.G8 4033 dated 01.01.2022 from Male to Hyderabad and both tickets status is shown as "Confirmed" and the Opposite Party charged Rs.77,408/- for the same. The complainant paid the said huge amount and purchased the tickets from the Opposite Party only with an intention to ensure that there shall not be any last-minute hassle in the holiday trip since he was travelling with family and children. On 15.12.2021 the Opposite Party sent an email to the complainant, that is just 11 days before the departure date that their flight from Hyderabad to Male (Flight No.G8 1533) has been cancelled. Immediately he contacted the office of the Opposite Party but in vain. Neither there was any information about alternate flight arrangement, nor there was any valid reason for cancellation of the flight, and it was just an abrupt and simple notice of 'cancellation of flight'. On 19.12.2021 the Opposite Party sent another text message stating that, the return journey flight from Male to Hyderabad (Flight No.G8 4033) has also been cancelled. This is the height of harassment by any well-known airlines and this is an utter failure and deficiency of service for a prestigious Airline passenger. Based on the Opposite Party's 'confirmed' status of the round-trip tickets, complainant made all other arrangements like resort bookings, local travel arrangements, local guide booking etc., at a huge cost at Male in view of the peak holiday season. As the Opposite Party suddenly cancelled the trip plan in view of the cancellation of both the flights, the complainant incurred huge loss of all the other expenses, having no alternative, he booked tickets for his entire family through other airlines (Indigo) in the last minute at a huge cost for the same dates with a stopover at Bengaluru in return journey and paid an amount of Rs.91,364/- for their tickets to other airlines with difference of Rs.13,956/-. Due to opposite party's arbitrary action of cancelling both the flights, the complainant had been put to huge financial loss, severe mental agony, pain and suffering. In this regard, complainant sent an email to the Opposite Party on 23.12.2021 calling upon the Opposite Party to immediately refund the amounts paid by him towards the ticket fare along with interest from 31st October till the date of payment, plus payment of adequate compensation for the damages, stress, mental agony and loss. The Opposite Party did neither chose to pay the demanded amounts nor did it choose to at least reply the complainant's mail. This is nothing but illegal, arbitrary and it is the height of harassment and deficiency of service. Having no alternative, he got issued a notice on 15.02.2022 and the Opposite Party replied vide letter dated 15.02.2022 requiring to submit the PNR number of the

tickets in order to trace/collect relevant details. The Opposite Party further relied on some flimsy and baseless rule i.e., Clause 1.4 of the Civil Aviation Requirements (CAR) stating that the Opposite Party is not liable to pay any compensation in case of force majeure. This alleged Rule was not informed to the complainant before issuing the tickets. Further neither Force Majeure conditions were prevailing at that time nor the Opposite Party informed the complainant about the prevalence of any Force Majeure conditions. It is regular practice for all the airlines to the tickets with several terms & conditions totally in their favour and all the terms and conditions are intentionally printed in a very small font which ordinary prudent person can read and understand them and will not be intimated to the passenger prior to collecting the money from the consumer and they are informed only after receipt of the payment and at the time of issuing the ticket they are printed overleaf on the ticket. This is nothing but a fraud played by the Opposite Party just to deny the right of the consumer to know the terms and conditions well in advance and just deny the Opposite Party's liability in case of any contingency. Vexed with the attitude of the Opposite Party, which amounts to not only deficiency in service, but also amounts to unfair trade practice on the part of the opposite party. Hence the complaint.

3. The Opposite Party filed written version admitting the booking of tickets but contends that, the complainant has not produced the actual facts before this Commission and is trying to mislead with all falsified and flimsy facts. The said flights were cancelled solely due to operational issues which were beyond the reasonable control of Opposite Party. They informed about the said cancellation of flight to the complainant 2 days prior i.e., 24.12.2021 in the morning through Call/SMS on the given contact No.91849038717 and an email ID manohar@shrishakti.com as provided by the complainant while booking the tickets. This Opposite Party cannot be held liable for alleged deficiency in service for any reason beyond its control. Moreover, there is no pending grievance of the complainant as total booking amount of Rs.77,408/- was refunded to the complainant and there is no huge loss as all the other expenses which he allegedly incurred for their stay and other arrangements at Male, hence the present complaint is a waste of precious time of this Commission, hence, this complaint is liable to be dismissed in this regard. The Civil Aviation Requirements, Series 'M' Part IV issued by 'Office of the Director General of Civil Aviation' (DGCA) dated 06.08.2010 and effective from 15.08.2010 specifically provides for facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delay in

flights. Clause 1.4 of the Civil Aviation Requirements (CAR) provides for exemption to airlines for payment of any compensation in case of cancellation of flights caused by any event of force majeure beyond the control of the Airline.

Extract of clause 1.4 of the said CAR requirement is reproduced herein:

The operating airline would not have the obligation to pay compensation in cases where the cancellations and delays have been caused by an event(s) of force majeure i.e., extraordinary circumstances(s) beyond the control of the airline, the impact of which leads to the cancellation/delay of flight(s), and which could not have been avoided even if all reasonable measures had been taken by the airline. Such extraordinary circumstances may in particular, occur due to political instability, natural disaster, civil war, insurrection or riot, flood, explosion, government regulation or order affecting the aircraft, strikes and labour disputes causing cessation, slowdown or interruption of work or any other factors that are beyond the control of the airline”.

The flights booked by complainant were cancelled due to unavoidable reasons which are not under the control of this Opposite Party hence, the opposite party cannot be made liable under the complaint as per Clause 3.3.1 of the said CAR regulations. Moreover, this Opposite Party had aptly refunded the total booking amount against the PNR No.U6Q1RS. Thus, there remains no grievance unattended or unresolved on the part of this Opposite Party to file this complaint. The Opposite Party further stated that, is not aware of any arrangement being made by the complainant at a huge cost at Male. The Opposite Party made refund of the full amount for the booking, and as per the T & C, this Opposite Party shall be under no further liability to the complainant. There is no deficiency in services on the part of the Opposite Party and by no stretch of imagination hence, prayed to dismiss the complaint with costs.

4. During the course of trial, the complainant examined as PW1 and got marked Ex. A1 to A7. Mr. Vishal Mathur, Authorized Signatory of Opposite Party is examined as Dw1 and got marked Ex.B1 & B4. Both parties filed their written arguments. Heard both.

5. The points that arise for consideration are:-

- (1) Whether there is any deficiency in service on the part of the opposite party?
- (2) Whether the complainant is entitled for the reliefs as prayed for?
- (3) To what extent?

6. Point No.1 & 2 :-

There is no dispute that, as per Ex.A1 the complainant booked airline tickets for his four family members for a holiday trip to Maldives during December, 2021 through the opposite party well in advance i.e, on 31.10.2021 to avoid any last-minute hassle and got 'confirmed' tickets vide PNR No.U6Q1RS, for flight No.G8 1533 on 26.12.2021 and return ticket through flight No.G8 4033 dated 01.01.2022 from Male to Hyderabad by paying Rs.77,408/- to Opposite Party. As per Ex.A2, on 15.12.2021, complainant, received an email just 11 days before from opposite party that, their flight from Hyderabad to Male (Flight No.G8 1533) has been cancelled and also received a text message on 19.12.2021 stating that, the return journey flight from Male to Hyderabad (Flight No.G8 4033) also been cancelled. The complainant tried to contact the office of the Opposite Party but in vain. Therefore, the complainant was forced to book Indigo Airlines tickets as per Ex.A3 at a higher price of Rs.91,364/- for the same dates with a stopover at Bengaluru. As per Ex.A.4 and A6, complainant sent an email and also a legal notice to the Opposite Party to immediately refund the amounts paid by him towards the ticket fare along with interest from 31st October till the date of payment, plus payment of adequate compensation for the damages, stress, mental agony and loss. The Opposite Party sent replied as per Ex.A7 stating that, they have refunded the booking amount of Rs.77,408/- on 28/12/2011 as per Ex.B1 screen shot, into the complainant's account hence, they treat the matter as closed. The contention of opposite party is that, the said flights were cancelled solely due to operational issues which were beyond the reasonable control of Opposite Party hence, they cannot be held liable for alleged deficiency in service for any reason beyond its control and relied upon Ex.B2 to B4 The Civil Aviation Requirements, Series 'M' Part IV issued by 'Office of the Director General of Civil Aviation' (DGCA) dated 06.08.2010 and effective from 15.08.2010 specifically provides for facilities to be provided to passengers by airlines due to denied boarding, cancellation of flights and delay in flights. Clause 1.4 of the Civil Aviation Requirements (CAR) provides for exemption to airlines for payment of any compensation in case of cancellation of flights caused by any event of force majeure beyond the control of the Airline. Though the opposite party taking shelter under clauses of CAR, it cannot be denied that, the complainant and his family members underwent severe mental agony and hardship due to cancellation of their holiday trip shows deficiency of service and unfair trade practice by opposite party and the complainant is entitled for the refund of Rs.13,956/- that the complainant spent on other airline

tickets, and Rs.10,000/- towards compensation and cost of the complaint.

7. Point No.3 :- In the result, the complaint is allowed in part, directing the opposite party to pay;

- i) Rs.13,956/- (Rupees thirteen thousand nine hundred and fifty six only) paid towards another flight charges
- ii) Rs.10,000/- (Rupees ten thousand only) towards compensation and costs of the complaint to the complainant.

Time for compliance is 45 days from the date of receipt of this order.

Dictated to steno transcribed and typed by her pronounced by us on this the 6th Day of July' 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:-

PW1 : Sri D.V. Manohar.

For Opposite Parties:-

DW1: Mr. Vishal Mathur, Authorized Signatory of Opposite Party.

DOCUMENTS MARKED:-

For Complainant:

Ex.A1- is the copy of Go Air Tickets, dt.31.10.2021.

Ex.A2- is the copy of Email from Opposite Party cancelling the tickets, dt.15.12.2021.

Ex.A3- is the copy of Indigo Tickets, dt.15.12.2021.

Ex.A4- is the copy of Email from Complainant, dt.23.12.2021.

Ex.A5- is the copy of Letter from Opposite Party, dt.23.02.2022.

Ex.A6- is the copy of Legal Notice by Complainant, dt.24.08.2022.

Ex.A7- is the copy of Reply notice by Opposite Party dt.01.11.2022.

For Opposite Parties :

Ex.B1- is the copy of the screenshot reflecting the refund being made by Opposite Party to the complainant.

Ex.B2- is the copy of Civil Aviation Requirements Section 3 – Air Transport series 'M' Part IV issue I dated 06.08.2010.

Ex.B3- is the copy of The Terms and Conditions of this Opposite Party.

Ex.B4- is the copy of Cancel/claim refund or reschedule/modify your booking the screenshot of the webpage.

MEMBER
KPS

MEMBER

PRESIDENT