

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1146 OF 2018

(Against the Order dated 03/01/2018 in Appeal No. 668/2016 of the State Commission West Bengal)

1. MAKEMYTRIP (INDIA) PVT. LTD.

DLF BUILDING NO. 5, TOWER C, DLF CYBER
CITY, DLF PHASE 2, SECTOR 25,

GURUGRAM-122002

HARYANA

.....Petitioner(s)

Versus

1. MANABENDRA SAHA ROY

53, ADARSHANAGAR, EAST, P.S. BEHALA

KOLKATA-700020

WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

HON'BLE MR. C. VISWANATH, MEMBER

For the Petitioner : Mr. Prince P., Advocate

Mr. Ujjwal Tandon, Advocate

For the Respondent : Ms. Pratiksha Sharma, Advocate

Mr. Ankit Acharya, Advocate

Mr. Syed E. Huda, Advocate

Dated : 05 Jul 2019

ORDER

1. The present petition has been filed against the order of the State Commission dated 3.1.2018 in first appeal No.A/668/2016 filed by the petitioner against the order dated 3.5.2016 in complaint case No.CC/551/2015, Unit-II, Kolkata

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2. The brief facts of the case are that the respondent had booked Durga Pooja Special Tour for Dubai on 18.8.2015 and paid an amount of Rs.10,000/-. Subsequently a tentative itinerary was

received by the respondent through email dated 19th September, 2015 which included the package of site seeing of Dubai giving the details of each day tour programme. This email also demanded the balance payment towards the tour and subsequently the respondent paid a sum of Rs.50,000/- on 10.8.2015, Rs.1 lakh on 28th September, 2015 and Rs.46,959/- balance amount on 5.10.2015 and thus had paid total package amount. Three days before the schedule date of departure i.e. on 15th October, 2015, when the complainant visited the office of the petitioner for collecting the air tickets, an itinerary which the petitioner alleges was confirmed itinerary was handed over to the respondent which was quite different from the earlier itinerary issued to him through email dated 19th September, 2015. The case of the complainant was that he could not have cancelled the tour programme because as per the brochure of the petitioner, on cancellation of the tour programme 10 days before the schedule date of departure, the entire deposited amount was liable to be forfeited by the petitioner. The complainant sent an email dated 15th October, 2015 complaining about this act of the petitioner. The complainant thereafter after availing the tour programme filed the complaining challenging the act of

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the petitioner amounting to restrictive and unfair trade practice and also deceptive trade practice.

3. The defence of the petitioner before the District Forum was that on 15th October, 2015, the respondent as aware of the final itinerary which the petitioner was providing to the respondent for the tour and yet the respondent chose to avail that tour programme and now the complaint was not tenable.

4. The District Forum after recording the evidences of the parties reached to the following conclusion:

“On proper consideration of the complaint, written version and evidence in chief including the documents it is found that it is admitted fact that the complainant and his family members undertook a tour to Dubai from 18-10-2015 to 22-10-2015. But complainant did not get all the facilities which he expected from tour operators. He asked for an initial itinerary for having an idea of the tour. Complainant reached Dubai on scheduled date. Regarding flight, he had no objection. But after reaching Dubai the conditions he had to face was contrary to tour programme as per brochure. Complainant received a brochure from the tour company in which for five days tour programme which places shall be shown by the OP but all these are not included in the trip, though in the itinerary it is mentioned that complainant could enjoy some trips to desert and other places as per package and no doubt complainant paid that package amount but nothing was included in the package tour, only hotel charge and air fare were included in the amount paid by complainant. Complainant should have informed clearly that he would not get the facility of sight-seen by paying that package tour but the tour had not been conducted following the itinerary. The OP with a motive of attracting tourists gives advertisements, but they deceived the tourists when they pay for tour. It is no doubt a deficient manner of service.

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No doubt in the present case at the time of advancement of argument Ld. Lawyer for the OP tried to convince that no doubt they did not take any step about sight-seen of package tour, such package tour because of the fact that the sight-seen was not included in the package as booked by the complainant but complainant only for the purpose of grabbing some money. OP has stated the -2- fact by way of e-mail that was sent by the official of the company and on enquiry of the complainant official of the company sent email and shared a tentative itinerary and not the fixed one. If the details (sight-seen) were a part of the package his itinerary would have been fixed and not tentative and moreover, extra amount would have been charged by the company in case of sight-seen could have been a part of the package. So, there was no negligence or deficiency on the part of the OP.

But in this regard, Ld. Lawyer for the OP submitted that it was a tour programme named Dubai Tour (Durga Puja) Trio Pack and in their advancement it is specifically mentioned that .request you to kindly book and confirm that holiday as per the details given below.. So, it is clear from their advertisement that it is a Durga Puja Holiday Tour at Dubai and at the same time in their detail about tour it is specifically mentioned everywhere tentative flights, tentative itinerary and total package cost is Rs.2,06,959/- and in that detail it is specifically mentioned tentative flight details, name of the persons who shall have to enjoy the said tour tentative itinerary of 5 days etc and practically considering that tour programme complainant deposited the entire amount prior to their arrival and within the date as fixed by the OP. So, the claim of the OP that sight-seen was not the part of package tour is completely false and fabricated.

Considering the argument as advanced by the Ld. Lawyer for the OP and also for the complainant himself who is a lawyer and after considering the tour package it is clear that flight details is tentative and itinerary is also tentative. Tentative means that in certain uncontrolled situation the itinerary may be changed, flight may be changed but tentative does not mean

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that there was no fixed programme for any sight-seen rather in their details it is clear that in the tentative itinerary it is specifically mentioned Day 1 . Arrival in Dubai . Upon arrival in Dubai, complainant and his family members will be transferred to the hotel in a luxury car. Thereafter, Day 2 . Dhow Cruise . Spend the evening cruising the Dubai Creek on a dhow cruise, with music and lights a signature experience that cannot be missed while in Dubai. This is a one hour evening cruise that includes dinner on the Dhow itself. Thereafter, Day 3 . Desert Safari with Dinner . Desert Safari and BBQ . complainant and his family member would get picked up from the hotel for the desert safari, a ride over the said dunes followed by a barbeque dinner and belly dance performance in the desert another Debai essential. The Desert Safari begins early evening with dune bashing and is followed by barbeque dinner at a traditional Bedouin campsite.

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Thereafter, Day 4 . City Tour . Take a half day city tour of Dubai on SIC basis. Visit the Dubai Museum and stop to take pictures at Burj Al Arab, Jumeirah Mosque, Burj Khalifa and Dubai mall among others. Thereafter, Day 5 . Day at Leisure . Spend the day at complainants leisure, take a walk down the Jumeirah beach or discover the Dubai Museum and Sheikh Saeed Al-Makhtoums House with entry tickets provided in the package, Departure . Leave for the Dubai Airport in a bus on Seat in Coach basis Considered this tentative itinerary it is clear that in that package tour even the entry tickets provided for entry to Dubai Museum, Sheikh Saeed Al-Makhtoums house and others. Fact remains the word tentative is used for the purpose if under any circumstances, itinerary is changed in that case they shall have to travel other places to visit but from their itinerary and the letter of the OP addressed to the complainant on 22-09-2015 it is clear in the said tour package this 5 Days programme for sight-seen etc. was part of the entire package which is proved from that fact.

It is specifically mentioned in the day 5 itinerary that entry tickets provided for any entry to Dubai Museum or any other places had been taken at the time of taking package money

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and it was part of the package tour. So, considering the said letter the E-mail of the OP it is proved that it was a tour not a contract for only booking the tickets from Dubai to Kolkata and Kolkata to Dubai -3- and also for booking any hotel. But it is a tour for 5 days starting from 18-10-2015. So, apparently, it is clear that it was a Durga Puja festival travel tour and as per itinerary complainant paid the entire amount of Rs.2,06,959/- for four persons of his family. No doubt OP purchased air tickets for their journey Kolkata to Dubai and return journey Dubai to Kolkata and booked hotel but they did not provide the sight-seen even though it was a part package tour and 5 days itinerary was there and though it was noted tentative that does not meant it is not part of the tour but for the sake of the argument if it is accepted that tentative is used for such purpose then why against air ticket it is noted tentative.

In this context, it is to be mentioned that tentative means the programme may be changed under compelling circumstances, but in the present case it is part of the tour but tentative does not mean that it is not part of the tour programme. If that is the fact, then we are convinced that the word tentative is used only for protection of the OP on the ground if any untoward incident takes place at Dubai at the time of sight-seen they may change that venue of sight seen but tentative does not meant that it is completely excluded from the tour programme and if it is accepted that tentative means not included in the tour proqramme in that case against air flight tentative means no air flight shall be provided but tentative means that if no untoward incident happens in that case the particular sight shall be shown to the tourists otherwise it shall be changed.

In this context, as example, we are stating one fact that in many advertisement for appointment it is noted tentative vacancies that does not mean that there is no vacancies but that means the vacancies are there but number of vacancies may be increased or may be decreased but that does not mean no vacancy.

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Anyhow, after considering the entire itinerary and the total advertisement for booking the tour it is clear that it was a package tour and it was Durga Puja special tour package from Kolkata to Dubai and four day stay at Dubai and during that period they shall have to provide certain sight-seen to the tourist and in fact, only for that purpose the tourist intended to book the said package and complainant being satisfied as also they shall have to get such service to enjoy the sight-seen on payment of the entire tour package booked for the tour but now, the OP has tried to say that tentative itinerary means no sight seen but such a false defence is taken to prove them innocent as it was the duty to carry the said complainants family to Dubai and return them and to place them in a hotel but that is not a fact and such a contract is not called tour because the complainant did not hire the service of the OP only for booking tickets or air ticket and for booking hotel. If that would be the intention of the complainant in that case there was no question of paying such an amount of package tour because the amount was received by the OP for package tour of 5 days.

On the contrary, the details of tour was sent by the OP to the complainant wherefrom everything is clear that it was a package tour and total amount was fixed Rs.2,06,959/- complainant paid it and initially booked the said tour by paying Rs.60,000/- for four persons and this package tour was named as Dubai Durga Puja Special and date of travel was fixed on 18-10-2015. It is also clear that the OP is not an agent of booking air-tickets or booking hotel but OP is a company or establishment for providing services by giving package tour programme for visiting the different places at different countries and the OPs main advertisement is explore travel, discover inspire destination and no doubt OP is a tour travel conducting company from India to different foreign countries and for that purpose they made advertisement. Complainant being satisfied about the tour itinerary and Hotel and in this regard OPs took all responsibilities for confirming ticket securing visas for booking air-tickets for booking hotels and also for providing such sight-seen but truth is that sight-seen was not provided by the OP and OP has admitted it. So,

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it is clear that as -4- per tour programme or package tour though complainant paid the entire amount that is Rs.2,06,959/- but after arrival at Dubai OP did not provide them to enjoy the sight seen for which complainant ultimately spent huge money to visit different places from their own pocket and it is not doubt an unfair practice on the part of the OP. No doubt OP violated the terms and condition of the tour package and this contract was made on the basis of the tour programme because it was a Dubai Durga Puja Special Package tour.

Considering all the above facts and circumstances, we are convinced to hold that OP by appearing before this Forum submitted some false defence and further it is found that complainant has been deceived by the OP and as a travel tour conducting company OP did not discharge their responsibilities and duties and did not provide proper service for enjoying the sight-seen as per itinerary and by that

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way they have bagged huge money from the complainant but against that complainant did not get such service from the OP for which complainant has proved deficiency, negligence on the part of the OP beyond any manner of doubt and at the same time deceitful manner of trade on the part of the OP is also proved.

Further after arrival at Dubai when complainant failed to get such benefit of sight-seen as per itinerary he suffered from mental pain and agony and in such a situation they realized that they did not hire the service of the OP only for their journey from Kolkata to Dubai and return from Dubai to Kolkata and for booking hotel but booking was made for package tour for 5 days and no doubt the general hiring transport cost etc. at Dubai is very high and it is experienced by this Forum that for 24 hours booking of an AC car is more than Rs.50,000/- and in fact, during stay at Dubai complainant spent huge money for enjoying sight seen when OP did not provide it, so, invariably OP grabbed huge money but did not render proper service for which complainant suffered further financial loss by spending it from his own package for differed places of tour.

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Peculiar factor is that in such a manner tour and travel companies like OP deceives the customers in that case it can safely be said that it has become a practice to the OP to deceive the customer in such a manner but as because complainant is a lawyer and he has some guards for which he has appeared and ventilated such an act and deceitful manner of trade on the part of the OP and prayed for redressal.

On overall evaluation of the entire materials and record and further the defence of the OP including their itinerary and contract in between the parties we are convinced that complainant has been able to prove the negligence and deficiency on the part of the OP company and also proved the manner of deceitful trade on the part of the OP and further they have practiced unfair trade practice what complainant and complainant has proved and OP has done the deceitful manner of trade and he deceived the complainant by taking huge money for rendering the sight seen during their tour which was their responsibility and obligation to provide it but they failed to do so.

In view of the above findings complaint succeeds and complainant is entitled to get such relief as prayed for.

Hence, Ordered That the case be and the same is allowed on contest against the OP with a cost of Rs.10,000/-.

-5- OP is directed to pay Rs.1,00,000/- to the complainant as compensation for causing mental pain and agony and also causing for financial loss during the tour because complainant paid huge money for that for deceitful manner of trade and for OPs unfair trade practice.

OP is hereby directed to pay the entire decretal amount of Rs.1,10,000/- within one month from the date of this order failing which for non-compliance of the Forums order OP has to pay penal damages Rs.5,000/- per month till full satisfaction of the decree and if it is collected it shall be deposited to this Forum.

Even if it is found that OP is reluctant to comply the order in that case penal action u/s.25 read with Section 27 of the C.P. Act shall be started against them for which further penalty and fine shall be imposed.”

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5. The petitioner being dissatisfied with the finding of the District Forum appealed against the order and took the same plea before the State Commission. The State Commission after perusing the evidences on record reached the following conclusion.

“Perused the papers on record. There was no doubt that the tour package was properly booked on payment of full charges to the appellant/OP by the respondent/complainant. The record revealed that an itinerary as appended to the package tour at the time of booking the slot. The same itinerary, as further revealed, was changed at the time of handing over VISA to the respondent/complainant by the appellant/OP. Since the schedule date of journey was imminent, the respondent/complainant had to reluctantly accept the tour package on protest. Perused the protest letter at running page 51.

The revised tour package revealed that no specific mention about any itinerary. The learned advocate appearing on behalf of the appellant/OP took the same plea that there was no commitment about site seeing in their itinerary when the facts remain that the earlier itinerary, an attracting and acceptable one to the respondent/complainant, based on which the tour package was adopted and the consideration paid in full, was changed beyond any knowledge of the respondent/complainant befooling them in a manner that they had hardly any scope for the trip to be called off. The respondent/complainant, this way, was deprived of getting excepted pleasure from his cherished visiting abroad that he was longing for considerable period of limits.

The above being a glaring deceptive practice, there cannot be any doubt about deficiency in rendering service to the respondent/complainant by the appellant/OP.

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We, in view of the above, are inclined to be at one with the observation of the learned District Forum in the impugned judgment and order.”

6. The said order is impugned before us by way of the present revision petition. It is settled proposition of law that the jurisdiction of this Commission in revision petition is limited. The Commission is not expected to re-appreciate and reassess the evidences led by the parties and then reach to any conclusion on facts on that basis. The only jurisdiction this Commission has is to see whether there is any miscarriage of justice or whether the impugned order is against the settled proposition of law or perverse. Hon'ble Supreme Court in **Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd** . 2011 (3) Scale 654 has observed as under:

“Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under

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Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.”

7. It is argued by learned counsel that the respondent had received the final itinerary before the date of departure and thus, he was very well aware of the tour programme and since he has availed the facility, he cannot now complaint about it. It is submitted that there was no deficiency in service on their part and the findings are therefore perverse. On behalf of the respondent it is argued that this final itinerary was given to the respondent after receipt of the entire tour amount on the basis of the earlier itinerary given through email. It is submitted that the respondent decided to avail the services of the petitioner only on the basis of the itinerary sent to him through email dated 15.5.2018. It is further argued that as per the policy of the petitioner, the cancellation is permissible ten days prior to the scheduled date departure, otherwise the deposited amount was liable to be forfeited. It is submitted that had the respondent cancelled the tour after receiving the final itinerary, the petitioner would have forfeited the entire amount deposited by the respondent.

It is further argued that this practice on the part of the petitioner, to induce its customer by sending an itinerary which they alleges is a provisional one and later on completely changing the said itinerary and supplying a totally different itinerary after receiving the entire tour amount and leaving no option with the consumers for cancellation of the tour, and

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threatening the customer with forfeiture of their entire amount, amounts to deceptive, restrictive and unfair trade practices.

8. We have given thoughtful consideration to the argument. All these contentions have been considered by the District Forum and on the basis of evidences led by parties, the District Forum had given findings. These contentions of both the parties were again heard in appeal by the State Commission and the State Commission after appreciating the evidences gave the finding on the facts which has been impugned before us.

9. Admittedly a tentative itinerary was sent by the petitioner to the respondent on 19th September, 2015 on the basis of which the respondent booked the tour and paid the entire tour amount. The schedule date of departure was 18th October, 2015. Three days prior to the date of departure, the so-called final itinerary was given to the respondent. It is also not disputed by the petitioner that the brochure allows the petitioner to forfeit the entire tour amount submitted by the respondent in case of cancellation of the tour between 10 days preceding the schedule date of departure. It means that the respondent was left with no option but to avail the tour. This practice or this act of the petitioner not only amounts to deceptive act but also amounts to unfair and restrictive trade practice. Findings of the Fora below are thus based on the admitted facts. We find no reason to interfere in the findings of the Fora below. No illegality or

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perversity has been shown. No miscarriage of justice has also been shown. The petition has no merit. The same is dismissed.

.....J
DEEPA SHARMA
PRESIDING MEMBER
.....
C. VISWANATH
MEMBER