

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1396 OF 2016**

(Against the Order dated 29/12/2015 in Appeal No. 347/2015 of the State Commission  
Chandigarh)

1. SPICEJET LTD.

319, UDYOG VIHAR, PHASE IV,

GURGAON

HARYANA

.....Petitioner(s)

Versus

1. RANJU AERY

W/O SH. ABNESH DADWAL, R/O 2361, SECTOR

19-C,

CHANDIGARH

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. B.C. GUPTA, PRESIDING MEMBER**

**HON'BLE MR. DR. S.M. KANTIKAR, MEMBER**

**For the Petitioner :** APPEARED AT THE TIME OF ARGUMENTS

For the Petitioner : Mr. Maibam N. Singh, Advocate

**For the Respondent :** For the Respondent

: in person

**Dated : 07 Feb 2017**

**ORDER**

**PRONOUNCED ON: 7<sup>th</sup> February, 2017**

**ORDER**

**PER DR. B.C. GUPTA, PRESIDING MEMBER**

This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 29.12.2015, passed by the U.T. State Consumer Disputes

Redressal Commission, Chandigarh (hereinafter referred to as “the State Commission”) in Appeal No. 347/2015, Spicejet Ltd. vs. Ranju Aery, vide which, while dismissing the appeal at the preliminary stage itself, the order passed by the District Consumer Disputes Redressal Forum, dated 30.11.2015, in Consumer Complaint No. 588/2015, filed by the present respondent Ranju Aery, allowing the said complaint, was upheld.

2. The facts of the case are that the complainant Ranju Aery booked air tickets online from Chandigarh to Bagdogra (West Bengal) for her and her family members through the website Yatra.com for travel from New Delhi to Bagdogra on 23.06.2015 and return journey from Bagdogra to Kolkata and the connecting flight of the opposite party (OP) Airlines M/s Spicejet Ltd. from Kolkata to New Delhi for 30.06.2015. An amount of Rs. 70,900/- was paid by the complainant through her debit card on 12.06.2015 for the said tickets. The complainant started her return journey on 30.06.2015 from Bagdogra to Kolkata by Indigo Airlines and reached the airport at Kolkata at 1.30 pm to board the connecting flight of the OP Airlines SG256 from Kolkata to New Delhi, scheduled for 20.40 hours. The complainant’s family members were having the boarding passes for the said flight. However, they were shocked to know that the said flight of the OP Airlines had been cancelled. The OP Airlines did not provide any alternative arrangement to the complainant and her family for travel to New Delhi. The complainant was, therefore, forced to buy tickets for another flight, operated by the Jet Airways from Kolkata to Mumbai, with connecting flight to New Delhi, departing at 20.40 hours from Kolkata. The complainant spent an amount of Rs. 80,885/- for five tickets for the said journey. The complainant and her family reached New Delhi by the said flight, but they missed the Volvo bus, which was supposed to carry them to Chandigarh. It is stated that the complainant and her family were scheduled to reach New Delhi at 22.50 hours on 30.06.2015, but due to the cancellation of the flight of the OP Airlines and travelling by another flight, they reached New Delhi at 5 am on 01.07.2015 and consequently, they were late in reaching Chandigarh. It is stated in the consumer complaint that the complainant obtained information about the status of flights, departing from Kolkata on 30.06.2015, from which, it was revealed that 128 flights out of the scheduled 129 flights had departed from Kolkata on that day, and it was the sole flight of the OP Airlines that was cancelled due to reasons best known to them. The complainant alleged that the OPs did not refund the fare charged from them for the cancelled flight, neither they provided another alternative flight. The complainant filed the consumer complaint in question, seeking directions to the OPs to refund the ticket amount of Rs. 20,000/- alongwith interest @ 12% per annum for the cancelled flight. They also sought directions to the OPs to pay the additional amount of Rs. 80,885/- paid by them for the alternative flight. The complainant also demanded Rs. 1.5 lakhs as compensation for mental harassment and Rs. 22,000/- as litigation charges.

3. The District Forum decided the complaint vide their order dated 30.11.2015 and the said order was passed ex-parte against the OP Airlines. The District Forum directed the OP Airlines to refund an amount of Rs. 80,885/- to the complainant after deducting the airfare between Kolkata to New Delhi for the cancelled flight, alongwith interest @ 9% per annum from the date of cancellation of the flight till realisation. They also directed the OP Airlines to pay an amount of Rs. 1.25 lakhs as compensation for harassment and Rs. 10,000/- as litigation cost. Being aggrieved against the said order of the District Forum, the OP Airlines filed an appeal before the State Commission and the said appeal having been dismissed at preliminary stage vide impugned order of the State Commission, the OP Airlines is before this Commission by way of the present Revision Petition.

4. The learned counsel for the petitioner submitted at the time of arguments that the District Forum had passed their order at their back, as they were not properly served in proceedings before

the said Forum. The order passed by the District Forum, duly confirmed by the State Commission was, therefore, bad in the eyes of law. The learned counsel stated that the petitioners are prepared to refund the cost of the tickets for the cancelled flight, if the same had not been done already. The learned counsel also stated that the directions to pay compensation of Rs. 1.25 lakhs to the complainant, should also be set aside.

5. Per contra, the respondent/complainant, who appeared in person, stated that the plea of having been proceeded against ex-parte before the District Forum, had not been taken by the petitioner in proceedings before the State Commission. The complainant and her family members had to undergo a lot of mental harassment at the hands of the OP Airlines, because of the cancellation of the flight. The orders of the consumer fora below were, therefore, in accordance with law and should be upheld.

6. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

7. The first issue that merits consideration in the case is whether the petitioner/OP were duly served in proceedings before the District Forum and whether the ex-parte order passed against them is justified or not. In this regard, the record of the District Forum has been summoned and has been perused. The order dated 20.11.2015 passed by the District Forum is reproduced as under:-

**“Dated: 20/11/2015**

**ORDER**

*As per office report, notice sent to OP through registered post on 21.10.2015, has not been received back served/unserved till date. Since 30 days have elapsed, therefore, OP is presumed (Sub Clause (2) of Regulation 10 of “The Consumer Protection Regulations, 2005”) to have been served. Called several times since morning, but none has appeared on behalf of OP. Hence, OP is proceeded as exparte.*

*As requested, for filing of further evidence, if any by the complainant and arguments, listed for 27.11.2015.”*

8. From the above order, it is clear that a notice was sent to the petitioner/OP by registered post on 21.10.2015, but the said notice had not been received back till 20.11.2015 and a time of 30 days since sending the notice had already elapsed. The District Forum relied upon regulation 10(2) of the Consumer Protection Regulations, 2005 and presumed service of notice upon the OP Airlines. In this regard, mention may be made of proviso to Section 28A(3) of Consumer Protection Act, 1986, which reads as follows:-

*“Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.”*

9. From the above provision, it is clear that the District Forum rightly presumed that proper service had been affected upon the OP Airlines, because the notice sent to them by registered post had not been returned within a period of 30 days. The District Forum, therefore, rightly proceeded ex-parte against the OP Airlines. The order passed by the District Forum, therefore, cannot be faulted on this ground at all.

10. The main issue involved in the case relates to the cancellation of the flight SG 256 of the petitioner Airlines from Kolkata to New Delhi on 30.06.2015. A perusal of the grounds of the Revision Petition indicates that the petitioner/OP has taken the plea that the passengers travelling in the airlines are governed by the terms of carriage, contained in the e-ticket, framed in accordance with Carriage by Air Act, 1972. One of the clauses of the aforesaid terms of Carriage says that if the flight was cancelled or delayed, the airlines will assist the passengers to get to the destination, but shall not be liable in any way for the delay or cancellation. Further, the airlines reserve the right to cancel or delay any flight without incurring any liability in damages or otherwise to the passengers or any other person on any ground whatsoever. The learned counsel for the petitioner stated that the e-ticket issued to the passenger was a concluded contract between the parties and hence, they were bound to follow the terms and conditions of the said contract. The flight in question was cancelled due to operational and technical reasons, which were beyond the control of the petitioner and hence, the complaint against them was not maintainable.

11. The contention raised by the petitioner, as stated in the paragraph above, is not tenable, because the basic issue that merits consideration in the present case is, whether there has been deficiency in service on the part of the OP Airlines or not, in terms of the provisions of the Consumer Protection Act, 1986. It shall be worthwhile to quote the definition of 'service' and 'deficiency' as stated in Section 2(o) and 2(g) respectively in the Act in this regard, which reads as follows:-

*“ Section 2(o) "service" means service of any description which is made avail-able to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;”*

*Section 2(g) "deficiency" means any fault, imperfection, shortcoming or inade-quacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service”*

12. From the facts and circumstances of the case, it is abundantly clear that the flight, which the complainants were supposed to board, got cancelled, although all other flights from Kolkata airport were operational. The OP Airlines have not explained anywhere whether there were any genuine reasons for the cancellation of the flight. Merely taking the plea that there were technical and operational defects, does not cut much ice in view of the fact that the other flights were operating normally and hence, the general conditions at the airport or the weather conditions etc. were conducive to the operation of the flights. The OP Airlines have also not explained anywhere whether they took any concrete steps to take care of the passengers of their cancelled flight and to make arrangements for their travel by some alternative method. The deficiency in service on the part of the OP Airlines is, therefore, writ large on the face of it, and they are liable to compensate

the complainant on this score. Referring to the contention of the OP Airlines about the concluded contract etc. between the parties, reference may be made to an order passed by the Hon'ble Supreme Court in **LIC of India vs. The Consumer Education and Research Centre (1995) 5 SCC 482** , where it has been laid down as follows:-

*“47. It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In **dotted line contracts** there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the **dotted line contract** . His option would be either to accept the unreasonable or unfair terms or forego the service for ever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract.”*

13. It is made clear from the view taken in the case cited above that if a contract is found unreasonable or unfair or irrational, the same cannot be given affect to, in view of the fact that there is clear deficiency in service on the part of the OP Airlines, as they did not take any steps to provide an alternative to the passengers.

14. In so far as the issue of territorial jurisdiction is concerned, the State Commission have aptly brought out in the impugned order that part of the cause of action arose at Chandigarh, because with booking of the travel tickets on the internet, the acceptance of the contract was received by the complainant through internet at his place of business/residence. We have no reasons to differ with the view taken by the State Commission that the State Commission at Chandigarh had the territorial jurisdiction to handle the complaint.

15. The State Commission have rightly observed that the complainant was lucky to have her relatives at Kolkata, from whom, money was borrowed and an amount of Rs. 80,885/- was paid to another airlines to reach New Delhi via Bombay, from where they travelled by bus to reach Chandigarh. The harassment caused to the entire family of the complainant due to the cancellation of the flight is quite evident from the facts and circumstances on record.

16. From the foregoing discussion, there is no valid ground to disagree with the concurrent findings reached by both the consumer fora below. It is settled legal proposition that interference in such concurrent findings in the discharge of the revisional jurisdiction should be made only, if there is a patent error or miscarriage of justice as a result of these orders. Such a view has been taken by the Hon'ble Apex Court in **Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd., (2011) 11 SCC 269** . It is held, therefore, that there is no illegality, infirmity or jurisdictional error in the orders passed by the fora below and the same are ordered to be confirmed. The present Revision Petition is held to be without any merit and the same is ordered to be dismissed. There shall be no order as to costs.

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**DR. B.C. GUPTA**  
**PRESIDING MEMBER**

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**DR. S.M. KANTIKAR**

**MEMBER**