

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2544 OF 2023**

(Against the Order dated 17/08/2023 in Appeal No. A/616/2022 of the State Commission  
Punjab)

1. GOIBIBO COM

OFFICE AT 19 TH FLOOR TOWER A B AND C EPITOME  
BUILDING NO 5 DLF CYBER CITY PHASE II  
GURUGRAM  
GURUGRAM  
HARYANA

.....Petitioner(s)

Versus

1. AMRIT PAL JAISWAL & ORS

RESIDENT OF DHURKOT ROAD NIHAL SINGH WALA  
DISTRICT MOGA PUNJAB

MOGA

PUNJAB

2. GEETA JAISWAL WO AMRIT PAL JAISWAL

RESIDENT OF DHURKOT ROAD NIHAL SINGH WALA  
DISTRICT MOGA PUNJAB

MOGA

PUNJAB

3. POONAM JAISWAL DO AMRIT PAL JAISWAL

RESIDENT OF DHURKOT ROAD NIHAL SINGH WALA  
DISTRICT MOGA PUNJAB

MOGA

PUNJAB

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE PETITIONER : MS. VASUDHA ARORA, ADVOCATE

FOR THE RESPONDENT : NEMO

**Dated : 07 August 2024**

**ORDER**

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 58 (1) (b) of Consumer Protection Act 2019, against the order dated 17.08.2023 of the State Consumer Disputes Redressal Commission Punjab (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 616 of 2022 in which order dated 07.06.2022 of Moga District Consumer Disputes Redressal Commission (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. 5 of 2020 was challenged, inter alia praying for setting aside the order of the State Commission dated 17.08.2023 and order of the District Commission dated 07.06.2022.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Appellant before the State Commission and OP before the District Commission, the Respondents (hereinafter also referred to as Complainants) were Respondents before the State Commission and Complainants before the District Commission.

3. Notice was issued to the Respondents on 03.11.2023. Parties filed Written Arguments/Synopsis on 29.01.2024 ( Petitioner ) and 16.01.2024 (respondent) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that Complainants no.1 and 2 booked travel flight tickets on 16.03.2019 from the OP for New Delhi to Edmonton for 29.10.2019 and return from Edmonton to New Delhi for 16.01.2020 on Jet Airways and paid Rs.1,29,860/-. The complainant no.3 also booked a travel ticket from OP on 20.02.2019 for New Delhi to Edmonton on payment of Rs.53,280/-. It is the case of the complainants that Jet Airways had closed their business and complainants are entitled to get the amount refunded being paid to the OP. The complainants approached the OP several times but in vain. Complainants sent legal notice to the OP and in response thereto, OP demanded the details from the complainants. Even then, no amount has been paid to the complainants. Being aggrieved, the Complainants filed CC before the District Commission and District Commission vide order dated 07.06.2022 partly allowed the complaint of the Complainants. Being aggrieved, the OP preferred FA before the State Commission and State Commission vide order dated 17.08.2023 dismissed the appeal of the OP. Therefore, the OP is before this Commission now in the present RP.

5. Petitioner had challenged the said Order dated 17.08.2023 of the State Commission mainly on following grounds:

- i. The Commissions have passed the order in contravention of the NCLT order passed in Insolvency Proceedings of Jet Airways.
- ii. Commission below failed to dismiss the complaint on the ground of non-joinder of necessary party i.e. Jet Airways in the complaint. Reliance is placed in the case of Utkal Maheshwari and Ors. Vs. Cox and Kings Ltd. and Ors. Manu/CF/0762/2020 and 2020 (3) CPR 387, RP No. 1262 of 2012 – R.L.Mishra Vs. U.P. Awas Evam Vikas Parishad and Anr. And RSA No. 4781 of 2010 titled Mohan Lal Sondhi and Anr. Vs. Surinder Prabhakar and Ors. ( P& H HC).
- iii. Commission failed to appreciate that Petitioner is merely a facilitator between consumer and service provider. The Petitioner has no control on act / omission on the

part of service provider such as Airlines i.e. Jet Airways and plays absolutely no role in functioning of third-party service provider.

- iv. The Petitioner has nothing to do with the entire dispute as Petitioner in discharge of its limited obligation had confirmed the booking of Jet Airways and issued confirmation voucher. In case of any cancellation or service related issue, the concerned Service Provider i.e. Jet Airways shall refund the booking in lieu of charges duly agreed upon at the time of making the booking. The concerned Airline i.e. Jet Airways is liable to process refund / compensation to the respondents.
  
- v. Petitioner just acted as a facilitator for booking airline ticket and respondents booked airline tickets themselves using the web portal of the Petitioner. If any default is made on the part of the Jet Airways, the Petitioner cannot be held liable. The Commission did not consider the order passed by this Commission in RP Nos. 1435-1436 of 2015 – Ajay Travels Vs. Pulak Jain and Ors.
  
- vi. Till date Petitioner has received no communication from Jet Airways and Petitioner made all efforts to get refund of the respondent, however, Jet Airways did not come forth with any resolution.
  
- vii. No liability for refund of cancellation can be thrust upon the Petitioner.
  
- viii. Petitioner is an intermediary under section 2 (1) (w) of the Information Technology, 2002 ( IT Act) and in terms of Section 79 of the IT Act, an intermediary shall not be held liable for any third-party information or data, uploaded to its online platform by any third party.
  
- ix. All online transactions are governed by the websites and application's User Agreement and Terms of Service, applicable to the person intending to purchase or inquiring for any products and / or services of Respondents and that the present case is governed by the terms and condition / user agreement between them at the time of booking in question.

x. User Agreement explicitly records that Petitioner has no liability for non-operational flights on the end of the concerned service provider i.e. Jet Airways.

xi. Petitioner has relied on the following judgment of Hon'ble Supreme Court / National Commission :

(a) Bharathi Knitting Co. Vs. DHL Worldwide Express Courier – 1996 4 SCC 704.

(b) Orix Auto Finance ( India) Ltd. Vs. Jagminder Singh and Anr. – 2006 2 SCC 598

(c) HDFC Bank Ltd. Vs. Kanwar Ohri and Ors – RP No. 2001 of 2012

(d) Karnataka State Financial Corporation Vs. Sheela S Kotehca – RP No. 488 of 2005

(e) Hotel Vrinda Prakash and Ors. Vs. Karnataka State Financial Corporation and Ors – 2007 96) KarLJ (624)

(f) Kunal Bahl and Ors. State of Karnataka – MANU-KA/2266/2022

6. Heard learned counsel for the Petitioner. In this case, Respondent no.1 (Amrit Pal Jaiwal) filed an IA No. 965 of 2024 seeking permission for exemption from personal appearance and to decide the case based on the available records / written arguments. The said IA was allowed. The arguments filed on behalf of the respondents have been considered and contentions of the parties raised in the RP, Written and oral Arguments are summed up below :

6.1 Learned counsel for the Petitioner apart from arguing the points which have been stated in para 5 argued that Director General of Civil Aviation, which is the governing authority of all the Airlines in India, vide its Civil Aviation Requirements has held that in case if a passenger / traveler books a ticket through travel agent, onus of refund in case of cancellation of ticket shall lie with the Airlines and not travel agent. Further, as per approved resolution plan for admitted claim upto Rs.15,000/- refund shall be processed as per actuals and for admitted claims over Rs.15,000/- a maximum refund of Rs.15,000/- shall be refunded.

6.2. It is further argued that despite being aware of the insolvency proceedings against Jet Airways, the respondents did not approach the IP directly for refund of booking amount. Further, the Petitioner was in constant communication with the respondents and had forwarded the cancellation request to the airline vide various emails. Further, the Petitioner had initiated the refund request to the Jet Airways and it was liability of the concerned airline to refund the amount since the ticket money was paid to the airline and only a service fee was paid to the Petitioner. However, Jet Airways had not issued the refund in view of the bankruptcy proceedings and the NCL order and the airline was not even impleaded as a party in the complaint.

6.3 The respondents in their written submissions have stated that both the Forums have passed a concurrent findings and relied upon the order of the Hon'ble Supreme Court in Ruby(Chandra) Dutta Vs. United India Insurance Company Ltd. ( 2011) 11 SCC 269 and G Mahalingappa Vs. G.M.Savitha- Civil Appeal No. 2867 of 2000. It is further averred that tickets were booked with the appellant and this fact was admitted by them and at the time of booking of tickets, the Jet Airways was not in picture at all and Petitioner never alleged that they are the facilitator between the service provider and the travelling customer. Further, the defence of the Petitioner that they cannot be held liable for the refund is totally devoid of merits, in view of their own guidelines or terms and conditions framed for refund and in view of the same, Petitioner will manage the refund the tickets. Moreover, the Petitioner has failed to produce any cogent and convincing documents regarding the fact that they passed the payment to Jet Airways and Jet Airways was to refund the same. Also, there is no communication between the respondents / complainants and Jet Airways regarding the tickets which were purchased through the Petitioner and further that there is no such 'user agreement' on the file used by the Petitioner. The Petitioner charge commission from the party whom they booked the tickets and that Commission goes to the Petitioner.

6.4 It is further averred that Petitioner could not produce any evidence to prove that terms and conditions of the User Agreement were ever supplied to the complainants, when and through which mode. Reliance has been placed on the order of the National Commission in Oriental Insurance Company Ltd. Vs. Satpal Singh and Ors. 2014 (2) CLT 305, wherein it has been held that insured is not bound by the terms and

conditions of the insurance policy unless it is proved that policy was supplied to the insured by the insurance company. Further, the exclusion clause of the policy is not binding on the insured, as has been observed by Hon'ble Supreme Court in Modern Insulators Ltd. Vs. Oriental Insurance Company Limited (2000) 2 SCC 734. Reliance has been placed on the findings of the High Court of Madras in M.Vadivel Vs. Arulmughu Iravatheeswarar Koil, Nanalal Vs. Bombay Life, Assurance Co. Firm Srinivas Ram Vs. Mahabir Prasad, Trojan and Co. Vs. Naganna, Rajinder Chjand Vs. Mst. Sukhi, Bhikka Vs. Charan Singh, M.M.B. Catholics Vs. P. Paulo Avira and Narayan Bhagwantrao Gosavi Balajiwali Vs. Gopal Vinayak Gosawi.

7. Main issue for consideration in the present case is whether an online platform / mobile application providers like the petitioner in the present case, or any agent, booking an airline tickets of any airline on behalf of its customer / service user, is liable to refund the fare received in case of failure on the part of airline to run flight as per booking due to any reason to provide such service as per the booking. In such cases, whether the concerned airline is the service provider to the customer or such online platform is the service provider or both are to be treated as service provider or is the online platform a mere facilitator / intermediary between the customers and the concerned airline, with no liability in case of failure on the part of concerned airline to provide services as promised / as per confirmed booking, due to any reason. It is the contention of the OP herein that once a confirmed ticket is issued to the customer, the OP is discharged from its obligations and duties qua the said booking, so there is no deficiency in service on their part in case of any default on the part of airline. State Commission in its order has duly considered and appropriately addressed various contentions raised by the OP like they being a mere facilitator / intermediary and hence not being liable, non-joinder of Jet Airways etc. State Commission, taking note of OP's own guidelines / terms and conditions for refund, rejected such contentions. Extract of relevant paras of order of State Commission is given below :

*“11. The main stress has been led by the learned counsel for the appellant/opposite party that they are intermediary and once the tickets were confirmed by the concerned airlines they cannot be held liable for that. The contention of the learned counsel for the appellant/opposite party is totally devoid in view of their own guidelines or terms and conditions framed for refund, which is reproduced as under:*

*“Goibibo International flight booking policy*

*XX XX XX XX XX*

*Refunds*

- *It is mandatory to contact Goibibo for all refunds, as the airline will not be able to refund your tickets booked at [www.goibibo.com](http://www.goibibo.com).*
- *Processing times for cancellation and refund requests vary and shall be done within 7 to 15 days.”*

*12. Similarly, the Jet Airways issued a Circular ‘Guidance to Refund Claimants’ whereby under Scenario 1, the Jet Airways has given the instructions for refund to the claimants. The relevant portion of the said circular is reproduced hereunder:*

*“Given the peculiarities of various arrangements, it is not feasible for the IRP to issue any definitive instructions which may apply across the board to all claimants. However, for the sake of convenience we are attempting to provide some informal guidance. Scenario 1 : Tickets booked through travel agent or online travel aggregator (e.g. make my trip, yatra.com etc.) Response : You are requested to claim your refund from your travel agent or travel aggregator as applicable.”*

*13. In view of all these guidelines, which are issued by the appellant/opposite party itself indicate Goibibo will manage the refund of the tickets which they are not being utilized. Moreover, the appellant/opposite party has failed to produce any cogent and convincing documents regarding the fact that they passed that payment of Jet Airways and Jet Airways was to refund the same. Without the relevant evidence they cannot escape from their liability for the payment which is received by them. Though the appellant/opposite party has mentioned about the ‘User Agreement’ but there is no such ‘User Agreement’ on the file used by the appellant/opposite party to substantiate their point of contention that after the booking and confirmation of tickets, the consumer has to approach the airlines, which never come into the picture at the time of booking of tickets or at the time of confirmation of the tickets. Also, there is no communication between the respondent/complainant and Jet Airways regarding the tickets which were purchased through the appellant-Goibibo. The appellant-Goibibo may be an intermediary but they are also a commission agent and they are not giving their services as charity. They definitely charge commission from the party from whom they booked the tickets and that commission goes to the appellant-Goibibo only after provided relevant services to the consumers. There is nothing on the record that the appellant-Goibibo is doing charity as an intermediary for the booking of the tickets, booked through online portal and in such an eventuality,*

*the appellant Goibibo cannot escape from their responsibility in case bookings are cancelled and they are bound to refund of the amount received by them from the consumers.*

8. State Commission has given a well reasoned order and we are in agreement with its observations and findings. There are concurrent findings of both the Fora below against the Petitioner herein. It has been held by Hon'ble Supreme Court in catena of judgments<sup>[1]</sup> that revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record. There is no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, RP is dismissed.

9. The pending IAs in the case, if any, also stand disposed off.

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<sup>[1]</sup> Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India ) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

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**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**