

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 548 OF 2021**

(Against the Order dated 17/03/2021 in Appeal No. 21/2020 of the State Commission  
Chhattisgarh)

1. KUNDAN PALACE

.....Petitioner(s)

Versus

1. AWADHESH KUMAR MISHRA

S/O SHRI MOTILAL MISHRA, ANJLI STD PCO,  
DHAMTARI ROAD, PACHPEDI NAKA, RAIPUR, TASHIL  
& DISTRICT RAIPUR (C.G.)

RAIPUR

.....Respondent(s)

**BEFORE:**

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

FOR THE PETITIONER : MR. RAJESH KUMA BHAWNANI, ADVOCATE

FOR THE RESPONDENT : MR. SULTAN AHMED, ADVOCATE  
MS. HIMANI MISHRA, ADVOCATE

**Dated : 04 April 2024**

**ORDER**

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the order dated 17.03.2021 of the State Consumer Disputes Redressal Commission, Chhattisgarh, Raipur, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 21/2020 in which order dated 27.12.2019 of District Consumer Disputes Redressal Commission, Raipur (hereinafter referred to as District Commission) in Consumer Complaint (CC) no 344/2012 was challenged, inter alia praying to set aside the order passed by the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Appellant and the Respondent (hereinafter also referred to as Complainant) was Respondent in the said FA/21/2020 before the State Commission, the Revision Petitioner was OP and Respondent was Complainant before the District Commission in the CC no. 344/2012.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 03.04.2023 (Petitioner) and 10.07.2023 (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:-

The complainant booked the Kundan Palace Marriage hall for his daughter's wedding ceremony, paying an advance of Rs. 25,000/- to the OP. Due to the demise of the son-in-law's grandfather, the wedding scheduled for 24.06.2012 was postponed, with the complainant informing the OP verbally on 17.06.2012 and serving a written notice on 20.06.2012. Despite assurances from the OP to refund the advance within 15 days, they failed to do so. The complainant then sent a legal notice through their advocate, but the OP falsely claimed in their reply that only Rs. 4,500/- was deposited and issued a receipt with no mention of the complainant's name, despite receiving Rs. 25,000/- in advance. As the OP did not refund the advance amount despite legal notices, the complainant was filed Consumer Complaint.

5. Vide Order dated 27.12.2019, in the CC no. 344/2012 the District Commission has allowed the complaint and directed OP to pay a sum of Rs. 20,000/- along with 9% interest p.a. from the date of cancellation of booking (20.06.2012) to payment date.

6. Aggrieved by the said Order dated 27.12.2019 of District Commission, Petitioner appealed in State Commission and the State Commission vide order dated 17.03.2021 in FA No. 21/2020 has dismissed the appeal and upheld the State Commission's order.

7. Petitioner has challenged the said Order dated 17.03.2021 of the State Commission mainly on following grounds:

i. The State Commission's decision was flawed due to its failure to adequately scrutinize the documents and affidavits presented by the petitioner/OP, resulting in an erroneous ruling. Notably, the State Commission overlooked the terms and conditions specified on the back of the receipt, explicitly stating that the deposit amount would not be refunded in the event of cancellation. Additionally, the State Commission neglected to examine the application form thoroughly, where inconsistencies were noted regarding the deposited amount. It was revealed that the complainant had manipulated the form to reflect a higher deposit, thereby misleading the lower forums and ultimately influencing the State Commission's decision.

ii. Moreover, the State Commission failed to acknowledge the circumstances surrounding the cancellation of the booking, notably the absence of a waiting list system and the complainant's awareness of the non-refundable deposit terms. Additionally, the State

Commission overlooked a crucial discrepancy in the complainant's claim regarding the deposited amount. Initially, the complainant asserted depositing Rs. 4,500/-, but later mentioned withdrawing Rs. 25,000/- in three transactions. This inconsistency casts doubt on the accuracy of the complainant's assertions. Furthermore, the State Commission neglected to address why the complainant would procure a receipt for Rs. 4,500/- if they had indeed deposited Rs. 25,000/-. This failure indicates a lack of meticulous analysis by the State Commission.

iii. The State Commission failed to consider the possibility that the withdrawn amount of Rs. 25,000/- might have been allocated for various wedding-related expenditures, such as tent house booking, light decoration, band parties, caterers, and other services. By disregarding this potential usage of funds, the State Commission's decision lacks thorough analysis. Furthermore, the State Commission incorrectly interpreted the phrase "25 deposited" in the documents as referring to Rs. 25,000/- without adequate evidence to support such an inference. This misinterpretation reflects a lack of diligence in assessing the evidence before reaching a conclusion. Moreover, the State Commission's assertion in paragraph 17 of the order, stipulating a deduction of Rs. 5,000/- from the complainant's deposit and entitling them to a refund of Rs. 20,000/-, contradicts the terms and conditions specified by the OP. The terms explicitly state that no refunds will be issued for booking cancellations. Additionally, the focal point of the case was the deposit of Rs. 4,500/-, not Rs. 25,000/-, as erroneously presumed by the State Commission. Therefore, the State Commission's decision lacks legal validity and should be deemed unsustainable.

iv. The order authored by Hon'ble Member Gopal Chandra Sheel has raised significant concerns regarding impartiality due to the fact that the Hon'ble Member is also a complainant in a case against the OP currently pending before the Hon'ble District Consumer Commission Raipur. This presents a clear conflict of interest, and it would have been appropriate for the Hon'ble Member to recuse themselves from participating in the hearing or rendering a decision. Their involvement in the case undermines the integrity of the proceedings and calls for intervention from a higher bench to set aside the order. Moreover, the State Commission overlooked crucial evidence presented before them and relied on presumption rather than conducting a factual analysis. This oversight demonstrates a failure to conduct a thorough examination of the case, thereby rendering the State Commission's decision untenable.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

- i. The counsel for Petitioner/OP reiterated the same grounds in arguments.
  - ii. The counsel for respondent/complainant asserted that the complainant booked the Petitioner's/OP's marriage palace for a sum of Rs. 50,000/- and paid an advance of Rs. 25,000/- on 29.02.2012, which was withdrawn from an ATM near the palace. Due to the death of the complainant's future son-in-law's grandfather, the marriage scheduled for 24.06.2012 was postponed. The complainant orally notified the OP on 17.06.2012 and sent a written notice via registered post on 20.06.2012.
  - iii. The complainant's advocate sent a notice demanding the refund of the paid amount. The OP replied, mentioning a deposit of Rs. 4,500/- and referring to receipt no. 175 dated 29.02.2012. However, the counsel contests that no such receipt was issued by the OP and alleges malafide intent on the OP's part. Vedprakash Mishra, who was present during the payment, provided an affidavit supporting the complainant's claim that only Rs. 25,000/- was paid as advance. The counsel argues that the OP's claim of Rs. 4,500/- as a booking amount and issuance of receipt no. 175 are false. The counsel alleges that the receipt presented by the OP was fabricated to mislead the forum.
  - iv. The claim of OP that the complainant fabricated the receipt of Rs. 25 deposited is baseless. However, the counsel argues that if forgery had been committed, the entire amount of Rs. 25,000/- would have been written instead of just "25 deposited." The counsel cites a previous judgment against the OP, where the OP refused to return an advance amount of Rs. 25,000/- taken for booking a building, resulting in an order to return the full amount. This demonstrates a pattern of behavior by the OP in retaining advance payments.
  - v. The counsel explains that the marriage was postponed due to the death of the respondent's future son-in-law's grandfather. The respondent informed the OP both orally and in writing, yet the OP failed to provide any service in return for the advance payment. The complainant suffered mental agony in attempting to recover the advance payment, leading to an additional claim for Rs. 15,000/- in damages. The complainant has submitted various documents, including the marriage card, condolence letter, receipt, account statement, and an affidavit from Vedprakash Mishra, in support of their complaint.
9. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. Petitioner has raised a specific issue that the Member of the District Forum, Raipur who authored the present order against the OP (Petitioner herein), himself has filed a complaint against the Petitioner herein in the

same District Forum in another case, which was pending at the time of his authoring this judgment. If that be the case, ideally the Member of the District Forum should have recused himself from this case. Even if the Member of the District Forum may have passed orders in his capacity as Member of the District Forum in a just and fair manner, however, it does raise apprehensions in the mind of the other party that perhaps he has not got a fair order. However, the Petitioner herein should have raised this issue before the State Commission. Hence, without going further on the issue, we take up the Revision Petition on merits.

10. In this case the Hall was booked on 29.02.2012, the wedding event was fixed for 24.06.2012, verbal intimation about cancellation was given on 17.06.2012 followed by written intimation on 20.06.2012. When any person books a venue for such event and pays some advance amount, obviously, the owner of such venue cannot allot such venue to anybody else. Hence, there are always standard conditions about non-refundability of the advance paid which are fair conditions as in the eventuality of subsequent cancellation of booking of venue after a long period, as is the present case, the owner of such venue will not be in a position to get fresh booking and it will cause loss to him. It is not the case of the Respondent herein/complainant before the District Forum that subsequent to his cancellation the same venue was re-booked by the Petitioner herein. Hence, in our opinion the owner of such venue is entitled to retain the advance amount paid.

11. We have carefully perused the condition mentioned on the back of the receipt (the Standard blank receipt No. 499 placed on record by the Petitioner herein), condition No.9 clearly states that 'rental amount is not refundable under any circumstances. The Respondent has not placed on record any receipt of the amount of Rs.25,000/- which he claims to have paid as booking amount. Appendix –I document produced by the Respondent/complainant states that advance booking for 24.06.2012 has been accepted. A mere hand written mention of '25 deposited' below this document is not sufficient enough to conclude that he has indeed deposited Rs.25,000/- as advance. He ought to have insisted on a proper receipt for this amount. The Respondent/complainant on the other hand questions the veracity of Rs.4500/- produced by the Petitioner herein (Receipt No. 175). Both the documents are of such nature that it cannot be concluded as to how much was the amount given as advance/security deposit for the said booking. Notwithstanding that, in view of our considered view that in case of retention of booking for such a long time and cancellation at the last moment, the owner of the venue i.e. the Petitioner herein is not obligated to refund the booking amount even if the reason for cancellation is genuine. It is in consonance with the standard condition on the receipt being used by them and with the normal practice in the sector with respect to booking of such venues, we are of the considered view that the District Forum went wrong in allowing the complaint and the State Commission went wrong in dismissing the Appeal. Hence, the order of the State Commission cannot be sustained and same is set aside. The complaint is dismissed. The Revision Petition is allowed accordingly.

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

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