

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 389 OF 2019**

(Against the Order dated 02/11/2018 in Appeal No. 78/2015 of the State Commission Delhi)

1. JAI DEV

S/O. SH. SURAT SINGH, R/O. F-16, STAFF QUARTERS  
FIRE STATION SECTOR 16, ROHINI  
DELHI-110085

.....Petitioner(s)

Versus

1. M/S. ARYAN TRAVEL POINT & ANR.  
THROUGH ITS PROPRIETOR, SMT. REENA SINGH, SHOP  
NO. B-9, DILSHAD COLONY, NEAR NEW CREATION  
PUBLIC SCHOOL,  
DELHI-110095

.....Respondent(s)

**BEFORE:**

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

FOR THE PETITIONER : MR. AJAY SWAMI, ADVOCATE

FOR THE RESPONDENT : MS. LALIT NARYAN SINGH, ADVOCATE

**Dated : 03 June 2024**

**ORDER**

1. The present Revision Petition (RP) has been filed by the Petitioner(s) against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 02.11.2018 of the State Consumer Disputes Redressal Commission, Delhi, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 78/2015 in which order dated 06.01.2015 of District Consumer Disputes Redressal Forum, North-East, Delhi (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. 427/2011 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 Complainant) was Respondent before the State Commission and Complainant before the District Forum. While the Respondent-1 & 2 (hereinafter also referred to as OPs) were Appellants before the State Commission and OPs before the District Forum.

3. Notice was issued to the Respondent(s). Parties filed Written Arguments/Synopsis on 26.04.2023 (Petitioner/complainant) and 19.09.2023 (Respondents/OPs) respectively.

4. Brief facts of the case, as presented by the Complainant and as emerged from other case records are that:-

The complainant paid Rs.12,000/- in cash and Rs.41,392/- via cheque for a tour package. The tour was scheduled for July 5th to July 9th. Upon receiving the air tickets, the complainant found discrepancies, including the return ticket being issued on SpiceJet Airlines instead of the promised Indian Airlines. There were no details provided about the hotel or contact person in Srinagar. Upon arrival, nobody received them, and the complainant had to arrange their own accommodations and transportation at extra cost. The return journey was also disrupted, leading to additional expenses. Legal notices were sent, claiming compensation for the booking, additional expenses, and inconvenience suffered. Consequently, complainant filed a consumer complaint in District Forum.

5. Vide Order dated 06.01.2015, in the CC no. 427/2011 the District Forum has allowed the complaint and directed OPs to pay jointly and severally an amount of Rs.41,002/- after allowing deduction of Rs. 12,390/- towards air journey by complainant and his family from Delhi to Srinagar towards booking amount of tour package, Rs. 63,500/- spent by the complainant as an additional amount and Rs. 2,50,000/- for compensation.

6. Aggrieved by the said Order dated 06.01.2015 of District Forum, Petitioner/complainant appealed in State Commission and the State Commission vide order dated 02.11.2018 in FA No. 78/2015 has modified the order of District Forum and directed OPs to pay Rs.72,000/-.

7. Petitioner has challenged the said Order dated 02.11.2018 of the State Commission mainly/inter alia on following grounds:

- i. The State Commission failed to acknowledge that the amount of Rs. 41,002/- awarded by the District Forum was determined after deducting Rs. 12,390/- for the one-way air journey from Delhi to Srinagar. This deduction was from the total tour package of Rs. 53,392/-, which had been fully paid in advance by the complainant. The State Commission erred in interpreting the amount of Rs. 41,002/- as a gratuitous payment. The District Forum had calculated this sum by including Rs. 18,900/- for the return airfare and Rs. 22,102/- for the remaining tour package, after deducting the proportionate cost of the one-way journey. The State Commission improperly exercised its judicial discretion by dismissing the entire amount of Rs. 2,50,000/- awarded by the District Forum, which was quantified for the pain, agony, and humiliation suffered by the complainant and his family, who had paid the full amount in advance.

- ii. The State Commission failed to fully consider the circumstances of the case, particularly the significant distress and trauma faced by the complainant and his family due to the OPs' illegal cancellation of tickets, which left them stranded at Srinagar Airport. The Commission's assertion that the compensation of Rs. 2,50,000/- was "extremely excessive" was both legally unsound and unjustified. The State Commission did not appreciate that the Rs. 2,50,000/- awarded by the District Forum was for the unexpected pain and suffering caused by the arbitrary cancellation of the tickets by the OPs. This action left the complainant and his family stranded despite having paid the entire tour package amount in advance, constituting a vicious and deliberate act of negligence. The State Commission erred by unilaterally suggesting to the OPs, with their concurrence, that the total amount payable by the OPs to the complainant should be Rs. 63,500/-. This suggestion was wholly unrealistic and negated the factual matrix of the case. The State Commission should have decided the case on its merits instead of relying on this suggestion and its approval, thereby treating the complainant as a non-entity in the proceedings.
- iii. The State Commission's order, which asserts that "the rest of the amount would be sufficient to compensate the complainant for litigation and harassment," is unjust and improper. Rejecting the entire sum of Rs. 2,50,000/- and substituting it with a nominal earning of bank interest upon the FDR is incomprehensible and fails to address the complainant's actual suffering and expenses. The impugned order by the State Commission deviates from the facts on merits. The rejection of the quantum of compensation and reimbursement of expenses incurred causes significant financial losses to the complainant. This is particularly prejudicial considering the rejection of his Leave Travel Concession (LTC) claim from the department due to the non-submission of boarding passes for the return airfare. The State Commission gravely erred in opining that the compensation amount of Rs. 2,50,000/- was highly accelerated and extremely excessive for a package for which the complainant paid Rs. 41,002/-. This observation is unrealistic as the complainant not only paid Rs. 53,392/- against Rs. 41,002/- but also incurred an additional amount of Rs. 63,500/- for the same tour package. The overall compensation should reflect the actual expenses and the significant distress experienced by the complainant and his family.
- iv. The State Commission, in its impugned order, disregarded the well-reasoned, comprehensive, and judicious findings of the District Forum. It substantially modified the District Forum's order against the Complainant without valid reasons, thereby undermining the original judgment's integrity and fairness. The State Commission significantly reduced the award amount granted by the District Forum, unjustly penalizing the Complainant. This reduction was unwarranted and not supported by the facts and merits of the case. The State Commission failed to adhere to judicial discipline by disregarding the previous order issued by the District Forum and providing its own conflicting interpretation of the order dated 06.01.2015, both factually and legally, resulting in an erroneous decision. The Complainant has suffered adverse consequences due to the impugned order issued by the State Commission, amounting to a violation of the principles of natural justice and equity. The substantial

reduction in the award without sufficient justification prejudices the complainant. Furthermore, the State Commission neglected to acknowledge and consider the OPs' clear and unequivocal admission of ticket cancellation, upon which the District Forum based its award judiciously and fairly. The OPs cannot claim immunity from their deficiencies and negligence, which were evident in their gross negligence, callous indifference, and blatant dereliction of duty in providing services to the complainant.

- v. This Revision Petition bears significant and urgent implications stemming from the State Commission's contested order. The ruling holds substantial consequences for the essential dynamic between service providers and consumers, underscoring the imperative of delineating responsibilities and accountabilities for service providers to uphold the objectives and principles enshrined in the Consumer Protection Act, 1986. The impugned order rendered by the State Commission is unsustainable, prima facie exhibiting traits of illegality, arbitrariness, and divergence from the factual and contextual realities of the case. The substantial reduction in the awarded amount, bereft of comprehensive consideration of the entirety of circumstances and merits, lacks justification. The State Commission's order appears biased and prejudiced, rooted in unfounded assumptions and conjectures. It fails to grasp the merits underpinning the complainant's stance, resulting in an unjust and inequitable decision that demands rectification.

8. The Respondent filed a reply and denied the assertions made the grounds of the revision petition. They argued that the contents of these paragraphs are incorrect and refuted entirely.

9. 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 learned counsel for Petitioner/complainant argued that the State Commission overlooked the fact that the awarded amount already accounted for the deducted air journey cost, which was not a gratuitous payment but a legitimate part of the tour package. The State Commission erred in wholly rejecting the awarded compensation for pain, agony, and humiliation, despite the complainant having paid for the tour package in advance. The observation regarding the excessive nature of the compensation fails to acknowledge the complainant's ordeal during the tour and at the airport due to arbitrary cancellation of tickets, constituting a grave oversight of the situation's gravity.

- ii. The Commission's unilateral suggestion and subsequent concurrence with the proposed compensation amount disregard the factual context, undermining the complainant's

position and violating principles of natural justice. The Commission overlooked the OPs' admission of cancelling tickets, a pivotal factor in the initial award, highlighting their gross negligence and deficiency in service. The deliberate cancellation of return tickets by the OPs, despite receiving full payment in advance, constitutes a clear deficiency in service and unethical conduct, causing significant prejudice to the complainant. The OPs failed to fulfill their obligations by not providing essential details of the tour itinerary, hotel accommodation, and local contacts despite repeated requests, indicating deceptive practices. The OPs remained unresponsive to the complainant's attempts to contact them, further exacerbating the situation and demonstrating negligence in customer service. Despite receiving full payment in advance, the OPs arbitrarily cancelled the return air tickets without informing the complainant, leading to unwarranted inconvenience and financial loss. The OPs attempted to mislead the court by presenting a forged receipt, which was not mentioned in their legal responses and misrepresented the payment details, causing further confusion and mistrust.

iii. The OPs' actions, including the cancellation of tickets and lack of response to calls, amounted to unethical behavior and harassment, causing distress to the complainant and their family. The OPs displayed gross negligence by failing to address the complainant's concerns and deliberately withholding relevant information, thereby violating their duty of care and causing financial and emotional harm. The counsel for complainant emphasizes the correctness of the District Forum's well-reasoned order, which found the respondents guilty of deficiency in service based on thorough examination of evidence and legal arguments. The counsel invokes Section 2(11) of the Consumer Protection Act, 2019, which defines deficiency to encompass any fault, imperfection, or shortcoming in service, including acts of negligence or deliberate withholding of information.

iv. The counsel for complainant relied on following judgements:-

a. In **Poonam Verma v. Ashwin Patel**, (1996) 4 SCC 332, the Hon'ble Supreme Court observed that:-

*“14. Negligence as a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do.....”*

*42. Negligence has many manifestations — it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or negligence per se, which is defined in as under:*

*"Negligence per se.—Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes."*

b. In **Ravneet Singh Bagga v. KLM Royal Dutch Airlines**, (2000) 1 SCC 66, the Hon'ble Supreme Court observed that:-

- *6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service..... The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fides, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service."*

c. In **Municipal Corpn. of Delhi v. Subhagwanti**, 1966 SCC OnLine SC 22

*4. ....The principle has been clearly stated in Halsbury's Laws of England, 2nd Edn., Vol. 23, at p. 671 as follows:*

*"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim res ipsa loquitur applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part....."*

10. When a person books a Holiday tour package for himself/ his family/group through a Travel Agency in such a business, what he expects the most is a single window delivery of all promised services in terms of tickets, hotel stay, local transportation, local facilitation, sightseeing etc. in a hassle free and assured manner so that he can happily and peacefully, and in a comfortable way, enjoy his tour/holidays at a place where he has no wherewithal to arrange all these things himself and hence engages the services of a travel agency who is in such a business, for a consideration. Moreover, advance bookings of tickets, Hotels etc. give him the benefit of not only confirmed bookings, but also cheap rates, as otherwise the tariffs for last minute bookings are always higher and at times it is difficult to get confirmed bookings due to non-availability. Such travel agency provides such all-inclusive/promised facilities for a charge. Hence, they are under contractual obligation to ensure that such promised services are provided without any delay/failure etc. If the purchaser of such services does not get such promised services and on account of fault on the part of Travel Agency he suffers, he is entitled to a reasonable amount of compensation on account of such mental agony, pain, sufferings and loss. The quantum of such compensation will be case specific based on the facts and circumstances of each case. Hence, compensation for such mental pain, suffering and agony, which cannot be measured precisely, has to be reasonable and commensurate with the extent of difficulty/sufferings undergone due to deficiency in service/failure to provide the promised facilities and not restricted to just the quantum of financial loss actually suffered. If the circumstances so demand, even punitive damages can be granted so that this not only compensates the consumer for the extreme hardships suffered but also act as a deterrent for unscrupulous travel agencies to desist from such wrongful practices and they take all reasonable steps to ensure compliance/fulfilment of their promised commitments.

11. It is the case of the OPs that they never dealt with the Complainant directly and they dealt with one Mr. Manoj Kumar, who acted as group leader for a group of 10 persons. The OPs also denied having received Rs.12,000/- in cash as advance from the complainant and contended that it is Mr. Manoj, who paid an advance of Rs.30,000/- through a cheque dated 18.06.2011 @Rs.3,000/- per head for 10 member group. OPs further contended that it was on instructions of the said leader of the group i.e. Mr. Manoj that OP-2 collected cheque of Rs.41,392/- from the complainant towards remittance of the part balance amount of package costs. For the remaining balance, the said Manoj had given a cheque for Rs.54,388/-. According to OPs case, the e-tickets were delivered to Mr. Manoj, group leader and there was no assurance of Indian Airline Flight and every detail of the hotel accommodation, its name and name of the local contact person was disclosed to the group leader, who was the sole person in touch with the OPs and the complainant never asked the OPs for such details. As per the case of the OPs, the group members were received at Srinagar Airport by the agent of OPs and picked up in the taxi and escorted to the appointed hotel. The group after placing their luggage and refreshing themselves left for Shikara ride etc. Later they left the hotel without any information. The local agent of the OPs being concerned about the security of the group frantically searched them but was unable to locate them. The group leader Mr. Manoj later informed the OPs that group shall not stay in the appointed hotel and would not avail the group package sold to him, further informing that the amount in his account, out of which cheque of Rs. 54,388/- was issued, was not sufficient to honour it.

Thereafter, the OPs informed Mr. Manoj that they shall be constrained to cancel the return tickets of the group and after waiting for two days, cancelled the same to avoid any loss to the OPs. The OPs have contended that the sufferings to the complainant had been owing to the group's own fault by not remitting the balance cost to the group package and there was no negligence on the part of OPs, who had completed their part of contract. The return tickets were cancelled after prior intimation to the group leader and waiting for two days after his refusal to get the said cheque honoured.

12. The complainant on the other hand denied the story of the group package of the OPs stating that both the families of himself as well as of his friend Manoj booked the package separately and the complainant has made entire payment of his package separately. He also denied OPs allegation of their agent receiving the alleged group at Srinagar Airport and accompanying them upto hotel.

13. The District Forum based on the facts of the case and evidence adduced before it, duly considered the main issue as to whether the complainant had travelled there either independently or as a part of the tour package of 10 members under the leadership of one Mr. Manoj Kumar. The District Forum took note of the fact that the complainant had issued a cheque of Rs.41,392/- in the name of OP-1, which was duly encashed on 01.07.2011 as per pass book entry of the complainant. The District Forum also took note of the receipt of Rs.45,000/- from Mr. Manoj Kumar but observed that it does not show that whether the said Manoj Kumar had paid the said amount for a tour of his family or for a tour of 10 persons as alleged. Total days and nights shown in the receipt of Rs.45,000/- from Mr. Manoj Kumar are 5 days and 4 nights and not 4 days and 3 nights as is the case of complainant, which has not been controverted by the OPs. The District Forum also observed that the Air Tickets issued in the name of complainant's family show that the complainant had left for Srinagar on 05.07.2011 at 5:25 hours from Delhi and had to return on 09.07.2011 by 11:55 flight, thus confirming that the tour of complainant's family was for a period of 4 days and 3 nights. The District Forum also took note of the calculation sheet, which though was unsigned, which provides the details of payments of two persons viz Manoj Kumar and Jaidev, the complainant. As per these details, Mr. Manoj Kumar had to pay Rs.80,088/- in total for six persons out of which Rs.18,000/- is shown paid in advance and balance Rs.62,088/- is shown as remaining, against Jaidev, Rs.53,392/- is shown to be paid in total for four persons and Rs.12,000/- is shown paid in advance and balance remaining Rs.41,392/-. The District Forum also observed that OPs have failed to provide the name of the agent who as per OPs had received the complainant at Srinagar Airport. Neither the name of hotel, he escorted them, has been disclosed. The receipt filed by OPs by Jhan Tour and Travels show the name of the hotel as Remona Rajbag, but it shows the stay for total of 5 days and 4 nights and does not tally with the dates of the travel of the complainant. After taking note of all the facts and evidence before it, the District Forum came to the conclusion that the complainant had undertaken an individual tour package for the family of the complainant and not the group package. The package of said Manoj Kumar with the OPs was also in his individual capacity for his family which could not even be materialized due to non-payment of the amount assured and that is why no tickets are shown to be issued in the name of his family. The



District Forum further observed that version of the OPs is being contradictory, is not trustworthy. Hence, the District Forum held that OPs are guilty of deficiency in service, allowed the complaint and directed both the OPs jointly and severally to pay to the complainant an amount of Rs.41,002/- after allowing deduction of Rs.12,390/- towards air journey by the complainant and his family from Delhi to Srinagar towards booking amount of the tour package, Rs.63,500/- spent by the complainant as an additional amount and Rs.2,50,000/- for compensation towards unexpected pain and suffering to the complainant and his family members.

14. We are of the considered view that District Forum has given a well-reasoned order and we are in agreement with its observations and findings. The State Commission on the other hand, in the Appeal filed by the OPs did not go into the merits of the case in detail and appears to have decided the Appeal based on its suggestion to the Appellant to pay a certain amount, which was accepted by the Appellants(OPs). This is evident from the observations of the State Commission, which are reproduced below:

*“5. In the above background we suggested the appellant to pay Rs.63,500/- spent by the respondent as an additional amount in all. The reason being that complainant had already availed service of Airlines on one side of departure. The amount of compensation is highly accelerated. Awarding of Rs.2,50,000/- for a package for which complainant paid Rs.41,002/-, is extremely excessive.*

*6. The appellant agreed to our proposal.*

*7. On the facts and circumstances of the case the impugned order is modified to the effect that appellant would pay Rs.63,500/- in all. The appellant had already deposited FDR of R.60,000/- dated 16.11.15 issued by Corporation Bank at the time of stay of execution. The same must have come to Rs.72,000/- approximately by now. The same alongwith accrued interest be released in favour of the respondent. Rest of the amount would be sufficient to compensate the respondent for litigation and harassment.”*

15. Aggrieved with the above said order of the State Commission, the Complainant is now before us in the present Revision Petition. After careful consideration of the entire facts and circumstances of the case, we are of the considered view that the State Commission went wrong in modifying the well-reasoned order of the District Forum based on its own suggestion to the OPs (Appellants before the State Commission), which was without the consent of the complainant (Respondent before the State Commission). Hence, the order of the State Commission suffers from a material irregularity and cannot be sustained. Hence,

the order of the State Commission is hereby set aside and order of the District Forum is restored. The OPs (Respondents herein) shall pay the amount as ordered by the District Forum along with interest @6% per annum, w.e.f. the date of order of the District Forum i.e. 06.01.2015 till the date of actual payment, within 30 days of date of this order. In case the OPs fail to pay the said amount within 30 days from the date of this order, the amount payable at the expiry of 30 days, shall carry interest @9% p.a. till the date of actual payment.

16. The Revision Petition is disposed off accordingly. any, also stand disposed off.

The pending IAs in the case, if

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