

**CHAIRMAN AND MANAGING  
DIRECTOR INDIA AIRLINES & 2  
ORS. V. C.V. JOSEPH, MANAGER  
(RETIRED) SYNDICATE BANK, & 3  
ORS.**

**CHAIRMAN AND MANAGING DIRECTOR INDIA AIRLINES & 2 ORS. V. C.V.  
JOSEPH, MANAGER (RETIRED) SYNDICATE BANK, & 3 ORS.**

**CHAIRMAN AND MANAGING DIRECTOR INDIA AIRLINES & 2 ORS.**

**.....Petitioner(s)**

**C.V. JOSEPH, MANAGER (RETIRED) SYNDICATE BANK, & 3 ORS.**

**.....Respondent(s)**

**Case No: REVISION PETITION NO. 2778-2779 OF 2013**

**Date of Judgement: 06 December 2023**

**Judges:**

**DR. INDER JIT SINGH  
PRESIDING MEMBER**

**For Appellant:**

**MR. SUMIT KUMAR VATS, ADVOCATE**

**MR. KOSHY P.J. ADVOCATE**

**MR. K.K. VINOSH, ADVOCATE**

**For Respondent:**

**MR. KOSHY P.J. ADVOCATE**

**MR. K.K. VINOSH, ADVOCATE**

**MR. SUMIT KUMAR VATS, ADVOCATE**

***Facts:***

***Complainants purchased air tickets from Thiruvananthapuram to Kolkata via Chennai, and Kolkata to Dibrugarh on 18th and 19th December 2003. The Thiruvananthapuram – Chennai flight on 18th December was delayed and diverted, causing complainants to miss their connecting Chennai – Kolkata flight. Complainants were re-routed via Bangalore and reached Kolkata on 19th December morning. However, their Kolkata – Dibrugarh flight got cancelled that day. They finally travelled to Dibrugarh on 20th December, one day later than originally scheduled. Complainants alleged deficiency in service like delays, diversions, cancellations; lack of information, food, accommodation during delays.***

***Arguments by Complainants:***

***Delayed and diverted flight on 18th December was due to negligence and deficiency in service by airline. Airline admitted liability and deficiency in initial response. Complainants suffered financial loss, mental agony due to airline's latches and gross negligence. Purpose of journey was defeated and they lost 2 days unnecessarily.***

***Arguments by Airline:***

***Delay and diversion on 18th December was due to technical reasons beyond airline's control. Airline made necessary announcements and tried to facilitate complainants' journey via alternate route. Hotel accommodation and food arrangements were made for complainants during delays/cancellations. Flight cancellations happen due to unforeseen technical faults or weather conditions. Safety of passengers is the priority. As per conditions of contract printed on tickets, airline is not liable for delays or cancellations due to technical reasons.***

***Court's Observations and Decisions:***

***Airline failed to give any specific details regarding technical reasons for delays and cancellations. Unilaterally decided conditions***

*protecting airline from liability are not reasonable. Passenger has no power to negotiate.*

*Even if genuine reasons, airline should have given valid reasons to passengers about delays/cancellations due to technical snags, weather etc. During cancellations, airline must provide hospitality, food, stay arrangements to affected passengers. Hence airline is guilty of deficiency in service. Complainants deserve compensation for harassment and mental agony.*

**Sections and Laws Referred:**

*Section 14(1)(c ), (d) and 21(b) of Consumer Protection Act 1986. Pioneer Urban Land case regarding one-sided conditions in builder-buyer agreements. Guidelines of DGCA regarding facilities for delayed airline passengers. Inter Globe Aviation case regarding airline's liability for technical delays.*

Case Laws Referred:

*No case laws were referred in the order.*

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**Full Text of Judgment:**

1. The Revision Petitions No. 2778-2779 of 2013 have been filed by the Petitioners, namely, The Chairman & Managing Director, Indian Airlines (presently known as "Air India Ltd.") & Ors. (Respondents before the State Commission and OPs before the District Forum) against Respondents – C.V. Joseph, Manager (Retd.) Syndicate Bank and Ors. (Appellant before the State Commission and Complainants before the District Forum) AND Revision Petition No. 1951 of 2015 has been filed by C.V. Joseph, Manager (Retd.) Syndicate Bank and Ors. (Appellant before the State Commission and Complainants before the District Forum) against The Chairman & Managing Director, Indian Airlines (presently known as "Air India Ltd.") & Ors.

(Respondents before the State Commission and OPs before the District Forum) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the common order dated 25.03.2013 of the State Consumer Disputes Redressal Commission, Kerala, (hereinafter referred to as the 'State Commission'), in First Appeals (FA) No. 165/2012 & 276/2012 in which order dated 30.09.2011 of Thiruvananthapuram District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Original Petition (OP) No. 256/2004 was challenged. The Petitioners in RP/2778-2779/2013 has prayed for setting aside the order dated 25.03.2013 passed by the State Commission. The Revision Petitioner in RP/1951/2015 has prayed for directing the Respondents (i) to pay value of the ticket amounting to Rs.1,57,430/- (ii) to pay Rs.1 lakh each of the petitioners.

2. Notices were issued to the Respondent(s) in both the Revision Petitions. Parties filed Written Arguments/Synopsis on 31.01.2023 (Air India Ltd.) and 04.05.2022 (Complainants) respectively.

3. Brief facts of the case, as emerged from the RPs, Order of the State Commission, Order of the District Forum and other case records are that: -

The complainants purchased 4 single Air Tickets from the OPs on 13.12.2003 for a journey from Thiruvananthapuram to Kolkata and then Kolkata to Dibrugarh scheduled as Thiruvananthapuram-Chennai in IC No. 932 and the connecting flight Chennai - Kolkata in IC No. 766 on 18.12.2003 and Kolkata - Dibrugarh in IC No.701 on 19.12.2003. The return journey was also arranged in IC No. 702, IC No. 771 and IC No. 909 on 23.12.2003 and 24.12.2003. The scheduled time of departure from Thiruvananthapuram was 14.30 hours on 18.12.2003 and the said flight was delayed for more than 1 and a half hour and the route of the said flight was diverted through Coimbatore without any prior notice by the wish and will of the OPs. The said flight reached at Chennai Airport only at 17.15 hours

against the scheduled time of 15.40 hours. The late arrival at Chennai was caused due to the delayed departure from Thiruvananthapuram and the diversion of route of the flight beyond the scheduled. The connected flight (IC No. 766) from Chennai to Kolkata which correctly departed at the scheduled time of 17.00 hours without boarding the Complainants. The OPs made an alternative arrangement in the late hours in order to continue the journey through Bangalore. The OPs made the Complainants believe that the connecting flight from Bangalore to Kolkata would be at 6 AM on 19.12.2003. Around midnight the officials of the Chennai Air Port made alternate arrangements via Bangalore in CD 7587 and thereby the Complainants reached Bangalore in the midnight. The food provided at Hotel Ashok was very poor. Complainants were compelled to wake up in the early morning around 4 AM to reach the Airport for the connecting flight to Kolkata at 8 A.M. on 19.12.2003. The complainants reached Kolkata Airport at 7.50 AM and the boarding passes were issued for the scheduled flight (IC No.701) to Dibrugarh at 9.45 AM. No breakfast was given to the Complainants at Kolkata Airport. It was announced that the breakfast would be served on the board after takeoff. But the connecting flight from Delhi to Dibrugarh did not reach at Kolkata. The Complainants were kept entangled inside the Kolkata Airport upto 3.00 PM by intermittent announcement of postponement of flight without any breakfast and lunch or other facilities. Finally it was announced after 3.30 PM that the flight to Dibrugarh was cancelled. The Complainants were taken to the Hotel Hindustan International only at 5.30 PM and the flight was on the next day. The complainants were kept in starvation in the cold day of December for more than 15 hours. Moreover, the complainants felt depression and severe mental agony. On the next day the complainants got the flight from Kolkata to Dibrugarh, and reached there on 20-12-2003 one day late from the scheduled time plan. That being very much aggrieved by gross negligence and irresponsibility on the part of the respondents at various Airports which resulted in the financial loss, mental pain and

agony, the complainants issued legal notice on 19-01-2004 to the OPs to make good of the loss sustained and for compensation. The OPs replied the same on 29-01-2004 by admitting the liability and deficiency of service on their part and made apology to the complainants with a condition to settle the dispute within 30 days. Further vide letter dated 08-06-2004 the OPs offered Four (4) Free Domestic return tickets to the complainants from Trivandrum to any point in India. Since the complainants were not interested to face any further similar difficulties and anomalies and allied financial loss for accommodations, they didn't accept the offer of the OPs. Hence filed complaint before the District Forum.

4. Vide Order dated 30.09.2011, in the OP 256/2004 the District Forum has allowed the complaint and passed the following order:-

"In the result, complaint is allowed. Opposite parties shall jointly and severally pay the complainants a sum of Rs.50,000/- towards compensation along with Rs.2,000/- as cost within two months from the date of receipt of this order. The amount compensated will carry interest at the rate of 12% if not paid within the afore said period."

5. Aggrieved by the said Order dated 30.09.2011 of District Forum, OPs appealed in State Commission (Appeal No. 276/2012) and the complainants also appealed before the State Commission (Appeal No.165/2012) for enhancement of claim. Vide order dated 25.03.2013 in FA Nos. 165/2012 and 276/2012, the State Commission dismissed the Appeal filed by the OPs (Appeal No. 276/2012) and partly allowed the Appeal filed by the Complainants (Appeal No. 165/2012) and passed the following order:-

"In the result, Appeal No. 276/12 is dismissed and Appeal No. 165/12 is allowed in part. The order passed by the Forum below is confirmed except in the result portion. This commission modified the amount and compensation as Rs. 1 lakh instead of Rs.50,000/- which ordered by the Forum below and along with

cost of Rs.2,000/-."

6. Both the parties have challenged the said Order dated 25.03.2013 of the State Commission mainly on following grounds:

(i) The complainants have prayed for directing the OPs to pay the value of the ticket amounting to Rs.1,57,430/- with 12% interest from the date of filing complaint and directing the OPs to pay Rs.1 lakh each of complainant under section 14(1)(c) (d) of the Consumer Protection Act, 1986.

(ii) The OPs have prayed for setting aside the order of the State Commission.

7. 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.

7.1 In addition to the submissions made in the Revision Petition, the complainants contended that the delayed departure from the Thiruvananthapuram and the enrouting of the flight beyond the scheduled is the deficiency of service and negligence on the part of the OPs. The deficiency in service has been admitted by the OPs. Due to the latches and gross negligence and deficiency of service and irresponsibility on the part of the OPs, the complainants lost two days in the Airports unnecessarily and the very purpose of the journey by spending and loosing huge amount for the tickets and other allied expenses. The agony caused by the OPs' deficiency of service leads to curtail the ecstasy of Air Travel. Even though the OPs had admitted their negligence and deficiency of service at the onset by their reply itself and thereby they were stopped from further defense, but they filed RP before this Commission after a lapse of 10 years alleging that the orders of the Fora below are bad in law, materially irregular and inconsistent with the provisions of the said Act to harass the Complainants unnecessarily at the belated stage. After filing the RP, the OPs have deposited the entire decree of

Rs.1,11,593.62 as demand draft in favour of the complainants on 21.02.2014 before the District Forum and complainants received it on 13.03.2014, which was even prior to the stay order passed by this Commission on 10.11.2014 and the RP No. 2778-2779/2013 became infructuous. The principle of Estoppel is applicable against the OPs as they complied with order of the District Forum. The complainants relied upon the judgment of this Commission in RP No. 2726/2013 in Rajesh R. Architectural Engineer Vs. Saramma Itticheria that once the order is complied with and paid the amount in terms of the order no further appeal or revision is maintainable.

7.2 On the other hand the OPs contended that the complainants purchased Airtickets to travel from Thiruvananthapuram to Chennai and Chennai to Kolkata and Kolkata to Dibrugarh. On 18.12.2003, the flight was delayed and diverted to Coimbatore due to technical reasons, which is beyond the control of the OP Airline. The OP had communicated and made all necessary announcements in timely manner about the diversion of the route. There after, the complainants were taken to Bangalore to avoid further delay in their journey and were provided accommodation to Grand Ashok, one of the highly reputed hotels. In the hotel special buffet was arranged for all layover passengers but the complainants insisted on availing dinner through room services. The duty manager informed them about the specially arranged for layover passengers and that food ordered through room service will be directly billed to the complainants. On 19.12.2003, the complainants continued their journey and reached Kolkata to catch connecting flight to Dibrugarh, but due to delay of incoming Aircraft, other related flights were delayed for the day, information was received that the flight was unable to take off due to technical reasons which further resulted in non-availability of aircraft at Kolkata to operate on 19.12.2003. The announcements for postponement was made around 12.30. Consequently, flight was combined with another flight and planned to operate on the sector Kolkata/ Dibrugarh/ Bagdogra/Kolkata with estimated time of departure at 9:40 hrs.



of 20.12.2003. The OPs ensured providing hotel accommodation at Hotel Hindustan International, Kolkata and also served breakfast at Top Deck Restaurant from 9:00 hrs. In spite of the above services the Complainants filed the complaint before the District Forum. The District Forum allowed the complaint. The State Commission modified the amount and partly allowed the Appeal filed by the complainants. The Fora below failed to appreciate the evidences placed by the OP Airline and had passed an order with error apparent on the face of the records. The flights were delayed and diverted due to technical reasons which were beyond the control of the OPs. Such circumstances always occur in the general course of Airline Business and is beyond the control or anticipation of anybody. It is further contended that such contingencies are also duly included in the conditions of contracts of carriage which are printed in all air tickets including the tickets issued to the complainants. Both the parties are bound by the terms and conditions duly published on the ticket. As per the terms and conditions printed on the jacket of the ticket, "The Company reserves the right, without assigning any reason, to cancel, advance, reschedule, overfly or delay the commencement or continuance of the flight or alter the stopping place or deviate from the route of the journey or to change the type of Aircraft in use without thereby incurring any liability in damages or otherwise to the passengers or any other person on any ground whatsoever". Condition 3 of Terms and Conditions of Carriage is reproduced herein "The company is not liable for damage occasioned by delay in the carriage by air of passengers or baggage". The flights in question were cancelled for reasons of technical fault/snag/weather conditions and the Respondents are therefore not entitled for any compensation on grounds falling within the aforesaid conditions. It is also submitted by the OPs that it is prerogative and primary responsibility of the Airline to ensure safety of the passengers travelling on a flight and do whatever is necessary for achieving the same as under no circumstances the Aircraft safety can be compromised.

Therefore, an aircraft which is not cleared for technical safety and CAR(Civil Aviation Requirement) Regulation cannot be allowed to operate and the same can be classified as a force majeure circumstance and the petitioner airline cannot be blamed for deficiency of any service. Without the permission of the controlling authority, flights are not allowed to take off and such delays/cancellation cannot be attributable on the part of the Airlines. The OPs also referred to the guidelines dated 06.08.2010 issued by the office of Director General of Civil Aviation which were effective and applicable on the date of incident and even subsequently. The OPs relied upon the law laid down by the Hon'ble Supreme Court of India in Inter Globe Aviation Ltd. Vs. Satchidanand (2011 7 SCC 463). The OPs relentlessly provided all basic facilities to the delayed passengers and scrupulously followed the procedures and guidelines issued by the Competent Authorities with respect to events of delay, such as ground announcements and refreshments for convenience of the passengers. The Complainants suppressed material facts with respect to the accommodation provided to them at Hotel Hindustan International, Kolkata. The Complainants have misguided the Forum by submitting that the reasons of delay/cancellation were not explained to them.

8. RPs 2778-2779/2013 and RP 1951/2015 arise out of same order of the State Commission dated 25.03.2013, vide which two appeals filed by both the complainants and OPs against the order dated 30.09.2011 of the District Forum were challenged. As the issues involved in these RPs are same/related, and parties are same, they are taken up together.

9. RP 1951/2015, which is filed by the complainants, is filed with a delay of 746 days. An IA/5069/2015 has been filed seeking condonation of delay. In IA, following reasons have been given for delay:

(a) That the applicant herein is a Cancer & Cardiac patient, and undergoing treatment for the Vocal Cord Cancer at the Regional Cancer Centre Thiurvananthapuram and M/s Ananthapuri

Hospitals, Thiruvananthapuram for cardiac problem respectively for the last eight years. Due to the ailments of Cancer and Cardiac problem the applicant was compelled to undergo various intermittent IP treatment and Radiation therapy and was unable to file the instant Revision Petition in the specified time before this Commission to modify and enhance the compensation awarded by the lower Fora. The copy of the documents related to the treatment are annexed as ANNEXURE-R8.

(b) The respondents herein had already filed the Revision Petition as R.P.No.2778- 2779/2013 on 26.07.2013, challenging the order of the State Commission dated 25.03.2013 in Appeal Nos. 165/2012 & 276/12 based on untenable averments and grounds. This Commission has issued notice on 10.11.2014 to the respondents/petitioners herein cross revision petition in the matter R.P No.2778-2779/2013 filed by the defendants in the original application. The respondents in the R.P No.2778-2779/2013 has got notice and appeared before this Commission only on 12.05.2015.

(c) The applicant is advised to have a good case before this Commission. The respondent shall not be subjected to any difficulty or prejudices if this Commission condone the delay in filing the revision petition. Irreparable loss and injury shall be caused to the petitioner in case this application is dismissed.

10. We have carefully considered the reasons for delay/grounds for condonation as mentioned in the IA. Keeping in view the fact that cross RPs filed by OPs are being taken upon merits, and issues in both set of RPs arise out of same order of State Commission and District Forum, in the interest of justice and considering the sufficiency of reasons stated in the IA, we allow the IA and condone the delay in filing the RP 1951/2015.

11. We have carefully gone through the orders of State Commission, District Forum, other relevant records and rival contentions of the parties. The delay and diversion of flight on the Thiruvananthapuram – Chennai sector on 18.12.2013

leading to complainants missing the connecting flight from Chennai to Kolkata, requiring routing them to Bangalore – Kolkata sector on the next day only, and further delay/cancellation of flight in Kolkata – Dibrugarh sector on 19.12.2013 leading to putting the complainants to this sector only on 20.12.2013 is not in dispute. The OPs have simply stated that flights were delayed and diverted due to technical reasons, which were beyond the control of OPs, without elaborating/detailing any such reason. While it may be the general practice to announce and attribute such delays and diversions for the information of passengers waiting at airports, while appearing before the Consumer Fora at various levels and contesting such cases, the OP Airline ought to have detailed such reasons rather than making generalized statement of 'due to technical reasons'. Even if the OP airlines think any such reasons are of such confidential nature affecting the safety and security of passengers (a plea not taken by them at any stage before any fora), they ought to have brought such specific reasons to the notice of fora below or this Commission at least in a sealed cover and requested for non-disclosure in public interest, which is not the case in the present cases. Hence, the OP Airline cannot hide their inefficiencies and deficiency in service in the name of 'technical reasons'. Further, the OP Airline cannot take recourse to unilaterally determined rules and guidelines which gives unbridled powers/protection to the OP Airline to have right, without assigning any reason, to cancel, advance, reschedule, overfly or delay the commencement or continuance of the flight or alter the stopping place or deviate from the route of the journey or to change the type of Aircraft in use without incurring any liability in damages or otherwise to the passengers or any other persons on any ground whatsoever. Such exercise of power by OP Airline have to be on valid reasons/grounds only, with disclosure to the affected passengers to the extent possible, subject to safety and security reasons only. Passengers who decide to travel by air and buy air tickets have no power/discretion to negotiate any

such condition(s) and have to accept it as a given condition and it amounts to signing by the passenger on a dotted line on an agreement between the Airlines and the passenger. In Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan (2019) 5 SCC 725, Hon'ble Supreme Court, while considering the binding nature of terms and conditions of builder-buyer agreement between the builder/developer and the allottee, observed as follows:- "a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder ..... the incorporation of one sided clause in an agreement constitute an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the builder ....., the appellant-builder cannot seek to bind the respondent with such one sided contractual terms."

12. Hence, we are of the considered view that the unilaterally printed terms and conditions on the jacket of the ticket, stated above, and condition 3 that "The company is not liable for damage occasioned by delay in the carriage by air of passengers or baggage", to which the OP Airline is taking recourse, is of no avail to OP Airline, unless there are sound and valid reasons for such delays and diversions/re-routing. In the instant case, the OP Airline has not been able to show any valid reason for such delays, diversions and cancellations, except the generalized statement of 'due to technical reasons'. Even during the hearing before this Commission OP could not give any convincing reasons for such delays/ diversions/cancellations etc. Even when such delays/diversions/ cancellations take place due to valid reasons, OP Airlines is duty bound to take care of such stranded passengers, many of whom miss the connecting flights, especially when these connecting flights are by the same carrier, as is the present case. The Airline need to provide them timely information about such delays/diversions/re-routing/cancellation etc., with valid reasons, subject to

safety and security consideration, like bad weather conditions, technical snag of aircraft, late arrival of aircraft from previous sector, late arrival of crew/flight attendants etc. and/or any such reason(s) which do not impact the safety and security of the passengers or airline system or violate any guidelines of the Airline regulator. Further, in case of cancellation or inordinate delays, such passengers need to be provided necessary hospitality, food, accommodation, transport etc. as per standard laid down protocols/guidelines of the Airlines. The facts and circumstances of the present case show that OP Airline failed to perform their obligations in the given situations and hence are guilty of deficiency in service towards complainants, entitling them to compensation. Hence, we agree with the concurrent findings of both the fora below with respect to deficiency in service on the part of OPs and entitlement of complainants to compensation, the District Forum has awarded a compensation of Rs.50,000/- (for all the four passengers/complaints together), which was enhanced to Rs.1.00 lakh by the State Commission, which comes to Rs.25,000/- per passenger/complainant.

13. As regards prayer for enhancement of the compensation, keeping in view the entire facts and circumstances of the case, especially the ordeal of the complainants at Thiruvananthapuram airport due to delay, at Chennai airport, due to re-routing through Bangalore and at Kolkata airport due to cancellation of flight, we are of the considered view that complainants deserve an enhancement of compensation from the one awarded by the State Commission. The Hon'ble Supreme Court in Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors. (2020) 16 SCC 512 held that ".....The word "Compensation" is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of CPA enable a consumer to claim and empower the commission to

redress any injustice done.....". Hence, we enhance the compensation to Rs.1.75 lakhs (total for all the four complainants). In addition, we award litigation cost of Rs.25,000/- to be paid by OPs to the complainants. The compensation of Rs.1.75 lakh will be payable along with simple interest @6% p.a. from the date of complaint till the date of actual payment. Amount already paid/deposited by the OP in compliance of order of this Commission/Fora below shall be duly adjusted from the amount payable as per this order. Interest on this amount will stop on the date of such deposit/payment. Balance payments as per this order shall be paid by OPs Airline (all OPs shall be liable jointly and severally) within 30 days of this order, failing which, it shall carry interest @12% p.a. As regards prayer of Petitioner in RP/1951/2015 for payment value of ticket amounts to Rs.1,57,430/- with interest, as the complainants have actually travelled in all the sectors, and they are being compensated for the deficiency in service on the part of OPs, they are not entitled to refund of the ticket amount of Rs.1,57,430/- with interest. Revision Petition No. 1951 of 2015 is disposed of accordingly. Revision Petition Nos. 2778– 2779 of 2013, praying for setting aside of order of State Commission are dismissed.

14. The pending IAs in the three cases, if any, also stand disposed off.

–END–