

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1517 OF 2017

1. ASIF KHAN

S/o Advocate Altaf Ilahi Khan, age 38 years, Occupation: Self
Employed, R/o A15, 503, Bramha Avenue, Kondhwa,
PUNE

MAHARASHTRA-411048

.....Complainant(s)

Versus

1. TAURUS INFOTEK (MANOJ PALWE)

16/1, Siddharth Chambers, Behind Ranka Jewellers, Off Karve
Road,

PUNE

MAHARASHTRA-411004

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : IN PERSON , ADVOCATE

FOR THE OPP. PARTY : MR ANKUR GUPTA, ADVOCATE

Dated : 04 December 2023

ORDER

This consumer complaint has been filed under section 21 (a) (i) of the Consumer Protection Act, 1986 (in short, 'the Act') alleging deficiency in service by the opposite party in not facilitating immigration services to Australia for which the complainant paid a consideration.

2. According to the complainant the brief facts of the case are that the complainant was a B Tech, MBA Degree holder and was also pursuing law from Pune University. The complainant alleges that the opposite party was the owner of Taurus Infotech and was providing services of consultancy such as immigration by charging consultancy fees including taxes from candidates for services/ assistance for immigration including representation, interaction, communication, carrying out any transactions between the enrolled candidates and the concerned government/ immigration authorities. The opposite party by making claims of immigration services convinced the complainant to enrol for immigration for Australia. The opposite party also convinced the complainant about qualifying for the Australian immigration by doing the assessment. The complainant alleges that the opposite party had assured, promised and convinced the complainant that the entire process will take approximately 9 months from 9th March 2008 to December 2008 to complete the immigration process.

3. On 09.03.2008 complainant enrolled to apply through the opposite party for immigration to Australia and submitted the requisite documents and paid a sum of Rs.25,000/- through cheque as initial instalment to start the process of immigration. On 4th June 2008, the complainant received an assessment letter, competency demonstration report

from the Engineers Australia which mentioned reference contract ID as 3434752 for all future communications and required the complainant to appear for IELTS Tests and to secure minimum 6 band in each module of listening, reading, writing and speaking. The complainant appeared for the IELTS Test on 26.07.2008 at Mumbai and secured overall score of 6.5 band and secured minimum 6 band in each module as prescribed by the assessment letter from Engineers Australia. The complainant states that he scored 7 in listening, 6 in reading, 6 in writing and 6.5 in speaking. The complainant also paid visa fees to the opposite party for the payment of visa fees. Complainant also paid Australian Dollars 2060 on 27.08.2008. The opposite party acknowledged the receipt of the amount and asked him to pay additional amount of Australian Dollars 45 which was paid in October 2008. Hence, the complainant has paid all the necessary payments for the immigration along with all the required documents to the opposite party. Complainant states that the Australian Immigration Department and Engineers Australia after verification of the degree/ assessment of qualifications of the complainant, categorised the complainant as 'Engineering Technologist' vide letter dated September 2008. The complainant submits the opposite party was to submit the fees, visa application and documents to the Australian authorities for further processing by the end of August 2008 or before 13.11.2008. However, the opposite party submitted the visa application and visa fees on 27.11.2008 after a delay of three months. On 27.11.2008, the complainant received an acknowledgement of receipt of visa application from the Australian Government, Department of Immigration and Citizenship. Complainant alleges that due to delayed filing of visa application by the opposite party by 15 days, there was a decrease in the overall score of the complainant. The complainant reminded the opposite party several times regarding submission of the documents immediately and before 13.11.2008 as the complainant was going to attain 30 years age as on 13.11.2008, since increase in the age decreases the related points for immigration to Australia. The complainant further alleges that the opposite party, due to delayed processing deprived the complainant of the benefit of age. The complainant alleges that even at a score of 110 points the case of the complainant was a strong case as the required score to qualify was 80 to 120 points. It was only due to the improper representation, carelessness, negligence, deficiency, misleading, cheating, delay and deceit by the opposite party that the complainant's case for grant of migrant visa Class VE Subclass 175 was refused due to a shortfall by 10 points.

4. The complainant states that the Department of Immigration and Citizen (DIAC) in its refusal letter clearly mentions assessment of the application of the complainant as per provisions of Skilled Sponsored Visa, which till 25.06.2011 required 80 points to pass and after 01.07.2011 required 100 points to qualify/ pass. The letter further states that it has not found any evidence of application/ acceptance of nomination or sponsorship of the complainant. Complainant has stated that the opposite party suppressed the communication received from the Australian immigration authorities pertaining to complainant's case. Thereafter, the opposite party informed the complainant again to write the IELTS Test so as to secure 7 band in each module. The complainant on 26.07.2008 informed the opposite party that he has met the criteria of IELTS as mentioned in the letter from Australian authorities dated 02.06.2008 which clearly states to secure a minimum 6 band in each module. The opposite party insisted that the complainant give the IELTS Test again. The complainant had no option than to believe the opposite party and appeared for IELTS again and again from 2008 to 2014 to secure 7 band in each module. Thus, he spent an additional Rs.75,000/-. The complainant alleges that he has suffered huge loss of Rs.2.40 crores due to cheating,

negligence by the opposite party based on the loss of potential income in Australia. The complainant lodged a criminal case no. RCC/2400 of 2017 at District Court, Shivaji Nagar, Pune, against the opposite party for his alleged role in it. Thereafter the complainant sent a legal notice to the opposite party on 19.01.2015 for misleading, cheating and unfair trade practice by the opposite party. The opposite party has denied all the facts pertaining to negligence and cheating. Hence, the complainant is before this Commission with the following prayer:

- i. This Commission may order the opposite party to compensate the complainant an amount of Rs.2,92,30,291/- (Rs.3.00 crore) as mentioned in the point no.45 of the complaint for financial loss/ injury/ interest suffered due to the failure, falseness, misrepresentation, negligence, carelessness, delay, cheating, deceit, misleading, ulterior motives and unfair trade practice of the opposite party;
- ii. Order the opposite party to compensate the expenses incurred in filing this petition and other expenses incurred during it;
- iii. Order the cancellation of opposite party's license/ permit of consultancy services so as to protect consumer rights of others as well; and
- iv. That such orders be passed as this Commission may deem fit in the circumstances of the case.

5. The opposite party resisted the complaint by way of reply on the application for condonation of delay filed by the complainant. The opposite party submits that the complaint is not maintainable as the complainant has not come with clean hands and has suppressed material facts; hence, the complaint be dismissed with cost. The opposite party further states that the complainant's delayed application was considered by this Commission on the ground of 'admit subject to just exceptions', without giving any opportunity to be heard. The opposite party further submits that the complainant has filed a criminal case against the opposite party in the year 2015 and the same was dismissed by the concerned court. Hence, the opposite party prays that the application for delay condonation filed by the complainant be dismissed on the ground of limitation as well as jurisdiction.

6. Parties led their evidence and filed their short synopsis of arguments. I have heard the learned counsel for the parties and carefully considered the material on the record.

7. Complainant, states that the opposite party has not submitted his written statement even after 90 days from the order dated 03.07.2017. This Commission vide its order dated 17.10.2017 allowed the opposite party to submit his written statement subject to cost of Rs.10,000/-. The complainant further states that the opposite party had no valid points and evidence to deny the claim and the complaint filed by the complainant was at the stage of final hearing and the opposite party is trying to counter it by citing pecuniary jurisdiction and section 24 A of the Act. The complainant further submits that the contention of the opposite party that the complaint lacks pecuniary jurisdiction and that it is barred by limitation are wrong and an attempt to divert the attention of the court. The complainant further submits that opposite party's advertisement that it provides quick immigration services within 9-10 months was misleading and the opposite party could not complete the immigration process even in eight years time. The complainant alleges that the opposite party be directed to compensate the complainant by an amount of Rs.2,92,30,291/-.

8. Complainant during the course of his arguments cited the following judgments of the Hon'ble Supreme Court as well as this Commission:

(a) The Hon'ble Supreme Court in the case of ***Charan Singh vs Healing Touch Hospital and Others*** and held that “the apex court held that calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application”.

(b) In the case of ***Chief Administrator, HUDA and Anr. vs Shakuntla Devi***, wherein it held that “the sine qua non for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled”;

(c) This Commission in the case of ***World Wide Immigration vs Jereena Job P***, RP No.2555 of 2013 decided on 13.05.2014, it held that “it is manifestly clear that the World Wide Immigration did not perform their duties diligently and that is why the application form of the respondent/ consumer was rejected. Under these circumstances, deficiency on the part of the petitioners is writ large in this case”.

(d) The National Commission in the case of ***Aditya Kumar vs World Wide Immigration***, RP no.3830 of 2012, held that “it is quite obvious that this is a case of clear-cut deficiency in service. When the opposite party/ World Wide Immigration was acting on behalf of the client after charging the necessary fees, it was required to play a proactive role by taking up the matter with the High Commission for the grant of visa. It is obvious that the opposite party failed to perform that role and hence guilty of deficiency in service”.

9. Learned counsel for the opposite party submits that the complainant had paid an amount of Rs.59,500/- for the services rendered by the opposite party; however, he was demanding an amount of Rs.3.00 crores which is exaggerated by the complainant to oust the jurisdiction of the District Forum and the State Forum. Learned counsel for the opposite party further submits that the opposite party was only to help the complainant to get the Australian PR Visa. Counsel for the opposite party states that the complaint was not entertainable as the complainant has failed to place on record any documentary evidence to support the loss suffered by him. It is submitted that the complainant has only referred to the average earnings to the tune of Rs.30,00,000/- and calculated the compensation of Rs.3 crores. Learned counsel further states that the complainant has never received any offer of employment from any employer or company in Australia. Learned counsel for the opposite party submits that the complainant failed to achieve 7 score in IELTS Test and the last test was on 25.05.2017, while the Australian authorities rejected the application of the complainant on 20.07.2011. Thereafter, the complainant filed the complaint after a period of more than 9 years from the date of expiry of initial period of nine months, i.e., December 2008. Further, there is a delay of more than six years in filing the complaint after the application was rejected by the Australian Immigration Authorities. Learned counsel for the opposite party submits that the complainant has not filed the present complaint within the prescribed period of two years after service of legal notice dated 19.01.2015. Hence, the complaint filed by the complainant is barred by limitation which should be rejected and the

complainant be directed to pay Rs.30,000/- towards State Sponsorship, which the complainant has not paid and to pay a compensation of Rs.5,00,000/- for harassment and damage of good will of the opposite party.

10. The case of the complainant is that the opposite party is guilty of deficiency in service in not ensuring immigration services to Australia within the time frame provided and in providing him incorrect information with regard to qualifying standards of the IELTS Test (i.e., score of 7.00 as against the required 6.00 score) thereby requiring him to write the test repeatedly. From the evidence on record, it is evident that the opposite party offered its services for immigration related consultancy to the complainant. There was an assurance of obtaining immigration within nine months. Opposite party contends that complainant failed to achieve the requisite IELTS standard. *Per contra*, the complainant avers that he was misguided that the requisite grade in the IELTSs was 7 whereas it was actually 6 and that he was successful in achieving 6 to 6.5 scores. His case is that despite being advised to take the IELTS Test several times to achieve the score of 7, the opposite party failed to process his application successfully and finally his overall score was downgraded as he had crossed the age of 30 years as per Australia Government norms.

11. From the documents on record, it is seen that the opposite party has placed on record two documents of Department of Immigration and Citizenship, Australia dated 20.07.2011 and 18.01.2012. As per the documents dated 20.07.2011, the application for grant of Skilled Independent (subclass 175) visa dated 27.11.2008 to the South Australian Office had been assessed against point test and the application was found to have not achieved the award of points equal to or greater than the applicable pass mark 120. Accordingly, the application was placed in reserve which had a validity upto 2 years.

12. As regards the application dated 18.01.2012, it was stated that the application was revised as the applicable pass mark had not been achieved as per the application which was in reserve as on 01.07.2011. The Department of Immigration and Citizenship, therefore, did not find the application to be successful under Skilled-Independent (subclass 175) and Skilled-Sponsored (subclass 176). He has also placed another letter regarding the IELTS Test which states that options for the complainant to meet the pass mark was to (a) undertake an IELTS Test and meet proficient English (7 across each of the 4 bands) to be awarded 25 points; (b) Apply for State/Territory nomination – the pass mark for such applications being 100 points; and (c) apply for employer nominated scheme visa class, where an eligible Australian employer was willing to sponsor him.

13. From this letter it is clear that the proficiency level for the IELTS Test was 7 points across each of the four bands to be awarded 25 points. These letters have not been denied by the complainant. The opposite party has stated that the qualifying mark of 7 in the IELTS Test was based on inputs from the Department of Immigration and Citizenship, Australia. Therefore, the complainant's reliance on the letter from the Australian Immigration Department and Engineers Australia that the requirement was only six points across 4 bands cannot be considered since the concerned immigration agency of the Australian Government had prescribed the qualifying criteria which was not in the domain of the opposite party to alter.

14. It is the case of the complainant that he was misguided and that he was required to repeatedly take the IELTS Test incurring huge expenditure which was not required from the communication of the Department of Immigration and Citizenship, Australia. It is evident that the immigration application on behalf of the complainant was processed by the opposite party and was considered by them under the skilled and sponsored skilled category and was found to have not qualified as per the criterion fixed. The case of the opposite party was that he cannot be blamed for the same, needs to be considered in the light of this document and the fact that the immigration process is governed by the criteria fixed by the Government of Australia. It is not the case of the complainant that the application was delayed or incorrectly filed. What is contended is that the process was not completed in time and he was misguided with regard to the minimum IELTS score that was required being 6 and not 7. It is evident from the documents referred to above, that the requirement was indeed 7 and not 6 as claimed. Therefore, his contention that the opposite party was guilty of deficiency in service is liable to be rejected. The delay in the filing of the application by the opposite party is manifest from the record. The opposite party is guilty of the delay which caused the complainant to cross the age of 30 years. However, in the light of the IELTS score, this was not very natural.

15. The immigration process of a country is a sovereign function of that Government and is done as per its own rules and regulations and qualifying criteria. The opposite party cannot be held to account for anything except in ensuring that the processing of papers based on the requirements of that Government are filed in the manner prescribed before the concerned agency. Since the requirement included the qualification in a test regarding proficiency in English language which was to be taken by the applicant himself, the applicant/ complainant cannot argue that the responsibility of the rejection of the application would rest with the opposite party who had undertaken to provide service for processing the application for immigration. It would be manifestly unfair and incorrect to hold opposite party responsible for the rejection of the application of the complainant for immigration since the opposite party has no role other than submission of the application along with necessary documents which included test score of the English language proficiency exam written/ taken by the complainant.

16. For foregoing reasons, the complaint is found to be without merits and is accordingly disallowed. Parties shall bear their own costs. All pending IA, if any, shall stand disposed of along with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER