



ROLE OF CONSUMER FORUMS TO PROTECT RIGHTS OF AIR PASSENGERS

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Abstract-- Air travel is not a luxury these days. The number of air passengers are increasing by leaps and bound all over the world. The rights of air passengers are covered in Warsaw Convention and other instruments of Warsaw Regime. The Warsaw regime has been replaced by Montreal Convention 1999. In India these international instruments have been given effect through Carriage by Air Act 1972. The paper analyses the role of consumer courts in protection of rights of air passengers and granting compensation on the basis of 'deficiency of services' which is not covered in Carriage by air Act 1972.

Keywords: Air Passengers, consumer Courts, rights, protection, jurisdiction.

INTRODUCTION

Protection of air passengers' rights would be fragmentary if remedy for their infringement is not accompanied by expeditious and economical procedure as an alternative to conventional modus operandi followed by civil courts. Consumer Forums, under Consumer Protection Act 1986, even though do not bar the jurisdiction of civil courts, provide an alternative to meet the objective of speedier and cheaper remedy to everyone who is covered under the definition of consumers.

CONSUMER PROTECTION ACT

The Consumer Protection Act 1986 aims to protect and serve the interests of consumers by providing speedy and efficient alternative mechanism of complaints redressal that apply summary procedure to resolve consumer disputes. The Consumer Protection Act 1986 is a complete instrument that provides for an elaborate procedure to be followed by consumer forums and commissions of different level.

Provisions of Civil Procedure Code (CPC) which are followed in civil suits in civil courts are applicable to consumer forums including National Commission, to a limited extent.¹ Regulation 26 of the Consumer Protection Regulations 2005 states that during the proceedings the parties and the counsels are to refrain from using CPC provisions except as provided in the Act or the Regulations themselves.² To provide speedy and simple redressal of consumers' complaints, the Act provides for a unique three tier quasi-judicial system of consumer forums; the District Forum, the State Commission and the National Commission that decides on the basis of principles of natural justice.³

The proceedings before Consumer Forum are those "in which consumers may pursue the remedies afforded to them by the Consumer Protection Act and other laws and where the rights of the parties are fully litigated by an organ of justice."⁴

¹ *Savita Garg v. Director, National Heart Institute*, (2004) 8 SCC 56.

² These regulations have been framed under section 30A of the Consumer Protection Act 1986.

³ Statement of Objects and Reasons of Consumer Protection Act 1986.

⁴ *Ethiopian Airlines v. Ganesh Narain Saboo*, (2011), CA no.7037 of 2004, SC, at p. 38.



“It is true that a proceeding before Consumer Forum is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised are too contentious to be decided in summary proceedings it may refer parties to a civil court....A proceeding before the Consumer Forum comes within the sweep of term “suit”.⁵

On the need of providing reasons for their decision by consumer courts, the SC held, “The authorities under the Act quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it arrive at a conclusion on reason. The necessity to provide reasons, however, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasizing. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is “unrealistic” or “exaggerated” or “excessive”.⁶

On compensation to be awarded by the consumer fora, SC held “While quantifying damages, consumer forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to established judicial standards where the claimant is able to establish his charge.”⁷

JURISDICTION

Jurisdiction is legal authority that officially empowers a court to hear and decide issues before it. Jurisdiction is the matter of law and does not depend on the agreement or consent of the parties.⁸ The Parties can neither confer on nor take away this authority from, any court though they certainly have the liberty to choose any one or more if there are two or more courts having jurisdiction in respect of their matter. In many standard form contracts this choice becomes rather compulsive.

The Consumer Protection Act 1986 (the Act) provides for the jurisdiction of District Forum, State commission and National Commission. The jurisdiction of all these three bodies is primarily conferred on the basis of pecuniary limits of the subject matter of or compensation,

⁵ *Patel Roadways Ltd v. Birla Yamaha Ltd.* (2000) 4 SCC 91 pp 106-07.

⁶ *Charan Singh v. Healing Touch Hospital And Ors*, at p. 3, <https://main.sci.gov.in/judgment/judis/17123.pdf> , equivalent citation: (2000) 7 SCC 668.

⁷ *Charan Singh v. Healing Touch Hospital And Ors*, at p. 3-4, <https://main.sci.gov.in/judgment/judis/17123.pdf> , equivalent citation: (2000) 7 SCC 668.

⁸ Such agreements are considered to be against public policy and void under section 28 of Indian Contract Act as they are in restraint of legal proceedings.



if any, claimed in, dispute.⁹ Local jurisdiction of District Forum and State Commission is conferred is similar to that as in regular civil cases.¹⁰ Apart from original jurisdiction, the State Commission has been conferred with appellate jurisdiction 'against the orders of any District Forum within the State.'¹¹ The State Commission has been conferred with revision power over the District Forums within the state.¹² Similarly the National Commission has been conferred with original and appellate jurisdiction along with revision powers over the State Commissions.¹³ Consumer forums, established under the Act are of limited jurisdiction with all the trappings of civil court.¹⁴ In *Trans Mediterranean Airways v. M/S Universal Exports and Anr*, the Supreme Court held, "...this Court has held that the tribunals and commissions do not fall under the definition of the "court". However, in some situations, the word "court" may be used in a wide, generic sense and not in a narrow and pedantic sense and must, in those cases, be interpreted thus..... Though these forums decide matters after following a summary procedure, their main function is still to decide disputes which is the main function and purpose of a Court. We are of the view that for the purpose of the CA Act and the Warsaw Convention, the Consumer Forums can fall within the meaning of the expression "Court".

In airline passenger claims, the question of territorial jurisdiction becomes rather more complicated as the case may involve many territorial factors. For example, a flying company, registered in country 'A', flies from country 'B' to country 'C', with passengers of many different countries, having a stopover in country 'D' where the cause of action arises. It may be further complicated if the accident takes place in sky or for any reason the plane has to take emergency landing in some country or suppose it is a flight with code sharing agreement. There may be further innumerable instances where the jurisdictional problems may arise. In a journey from Delhi-Doha-Bahrain-Istanbul-Dubai-Delhi, tickets purchased in Delhi from a foreign airline having its office in Delhi and inconvenience and agony was caused to the passenger during Bahrain-Istanbul slot of journey. In such a case the jurisdiction of National Commission can't be denied on the ground of extra territorial jurisdiction 'simply because the discomfort was during part of the journey which was outside the country.'¹⁵ The question of jurisdiction of consumer forum is not to be examined with reference to the Carriage by Air Act

⁹ For District Forum, the limit is up to rupees twenty lakhs, for State Commission the limit is up to rupees one crore and for National Commission the limit is any amount exceeding rupees one crore. Ss 11(1), 17(1)(a)(i) and 21(a)(i) respectively of The Consumer Protection Act 1986.

¹⁰ As in Section 20, Civil Procedure Code 1908.

¹¹ Sec. 17 (1)(a)(ii) Consumer Protection Act 1986.

¹² Sec. 17 (1)(b) Consumer Protection Act 1986.

¹³ Sec. 21, Consumer Protection Act 1986.

¹⁴ *Greenseas Shipping Company Pvt Ltd v. Chairman and Managing Director Indian Bank, Madras*, NDRC Original Petition No. 264 of 1996, decided on 23 Nov. 2001.

¹⁵ *US Awasthy v. Gulf Air & Anr*, IV (2003) CPJ 114NC. In this case the National Commission was hearing appeal from the decision of the State Commission. So actually, it was a question regarding the jurisdiction of State Commission to deal with the matter and, in turn, jurisdiction of any consumer forum in such cases. After amendment of 2002, section 17(c) confers jurisdiction on State Commission if the cause of action, wholly or in part, arises in the territory under its authority. As the tickets were purchased in Delhi, part of the cause of action arose there which confers jurisdiction on State Commission.



1972 and Warsaw Convention.¹⁶ Any party aggrieved by the decision of National Commission may file an appeal to the Supreme Court within 30 days from the date of the order.¹⁷

RIGHTS OF AIR PASSENGERS

To catch up with market competition and to attract maximum possible consumers, airlines presents multilevel pricing for advance to urgent bookings. In these levels, the price vary in grades from very to higher and then highest, lower fare for advance bookings and price keeps on increasing for bookings with the date of travel approaching near. This has become a global practice irrespective of social, cultural and economic diversity among consumers of different countries. In country like India the rates during festivals and marriage seasons are raised disproportionately. Moreover, a policy like this may be suitable to one class of passengers like seldom fliers but not to others like the working class consumers and frequent travelers.

Number of facilities at airports and on flight and supporting staff do not match the number of commuters. The scenario is more complicated in case on low-cost flights. Delay in check-ins and on luggage-belt as well as practice of create false impression by artificial booking can be managed and handled by taking strict action, compensating passengers and imposing heavy penalties on airlines. During seasons with rush of passengers, more staff and facilities are to be deployed and placing more self-service counters.

The consumer Protection Act has proved to be a ray of hope, a silver lining to the passengers who can be heard under this welfare-enactment. The Act creates a parity between the hapless consumers and powerful business bodies to enables the consumers to stand and to question the arbitrary and unreasonable acts of the later. The enactment is to fill the gap between the service provider and the consumer. The Act aims to establish a welfare society by ensuring direct and corresponding participation of the consumers in 'market economy.' The Forums and Supreme Court always favours an interpretation of the provisions of the Act in favour of consumers according to its objectives.¹⁸ The Consumer Protection Act 1986 is in addition to and not in derogation of Carriage by Air Act 1972.¹⁹

The relationship of passenger with a carrier is founded on the contract of carriage. In contract, both the parties are considered to be on equal footing. But here, the airline stands on a better footing to exploit the position of a customer. The contract between the two is a 'standard form' of contract, thus is affected by all the vices of these types of contracts. The airline is in the position to dominate the conditions of printed contract which the passenger has option either

¹⁶ Ibid. Rule 28 of Schedule 1 of Carriage by Air Act 1972 which corresponds to Art. 28 of Warsaw Convention, also empowers the court of competent jurisdiction of the place where the carrier 'has an establishment by which the contract has been made.' In this case the airline has an office in Delhi, so this is not the case of extra territorial jurisdiction. As per section 3 of Carriage by Air Act 1972 'the rules contained in the First Schedule,...have the force of law in India to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.'

¹⁷ Sec. 23, Consumer Protection Act 1986.

¹⁸ In a number of cases the NC and The SC have reiterated the significance and objectives of the Act and the need to construct its provisions to save the rights and enhance the interests of the consumers. See *Lucknow Development Authority v. M.K. Gupta* (1994) SCC 243; *Ethiopian Airlines v. Ganesh Narain Saboo*, (2011) 8 SCC 539; *National Insurance Co. Ltd v. Hindustan Safety Glass Works Ltd*, (2017) 5 SCC 776; *Air France v. O.P. Srivastava*, NC FA No. 310 of 2008, decided on 22.03.2018.

¹⁹ *Trans Mediterranean Airways v. M/S Universal Exports and Anr* SC CA 1909 of 2004.



to accept or leave his plan to travel. "It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract."²⁰

If during the carriage, the airline does not provide proper food and other necessities and not considerate enough to the needs of old and disabled persons, then compensation for such cases can be covered only under 'deficiency in services' under consumer protection law as such cases are not touched upon in Warsaw/Montreal instrument and related law i.e. Carriage by Act. For example in Harsharn Kaur's case, the passenger, a 60 year old woman, was not provided with diabetic food as per demand nor a wheel chair for boarding and de-boarding (as she had a problem of knee-pain) during her whole stretch of the lengthy journey from Delhi to San Francisco via Zurich. Being old and lone passenger, she did not complain. The problem experienced in such cases is whether the passenger is 'consumer' or not. In number of cases, it has been accepted that passenger is a consumer in Consumer Protection Act 1986. Regarding proper treatment towards the passengers, the record of even well established and well-off airlines, like Lufthansa and British Airways, is not up to the mark, then what can be expected from small carriers. Referring to the ordeal of a lady passenger of 60 years, the State Commission of Punjab rebuked the airlines in these words, "She has suffered a lot due to her no fault and as such the conduct of Lufthansa Airlines and British Airways as well as airport authorities was highly condemnable. In fact all of them adhered to un-humanitarian, barbaric approach which was contrary to the Air Traffic protocol."²¹

CONCLUSION

Consumer Fora have performed commendable task in protecting rights of air passengers. They have provided compensation to the passengers by speedily resolving their complaint. They have provided hefty compensation for infringement of passengers rights even though they are not covered in Carriage by Air Act by covering their claim under 'deficiency of services.' They even provide compensation for mental injury if it is accompanied by physical injury or loss.

²⁰*LIC of India and Anr v. Consumer Education and Research Centre*, SC CA No. 7711 of 1994, decided on 10.05.1995, at 22. <https://main.sci.gov.in/judgment/judis/10745.pdf> 30.10.2020.

²¹*Harsharn Kaur Dhaliwal v. Lufthansa Airlines and Others*, CC No. 95 of 2019 decided on 29.01.2020 SCDRC Chandigarh U.T. At 10. <http://cms.nic.in/ncdrcusersWeb/search.do?method=loadSearchPub> per contra, *Ravneet Singh Bagga v. KLM Royal Dutch Airlines*, (1999), CA no. 8701/1997, SC.