DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, MALAPPURAM

(Present: Sri. Mohandasan. K, President
Smt.Preethi Sivaraman.C, Member
Sri. Mohamed Ismayil.C.V, Member)

Date of filing: 22/06/2024
Date of Order:20/02/2025

C.C.NO.483/2024

1. Dr. N.M. Mujeeb Rahman,
S/o late Dr. N.K. Muhammed,
Jamal Manzil,
Valancheri, Malappuram Dt,
PIN- 676552.
2. Dr. C.M. Shakeela
W/o Dr. Mujeeb Rahman
Jamal Manzil,
Valancheri, Malappuram Dt,
PIN- 676552.
(BY:Advs. T.P.Abdul Jabbar, Tirur & Ashiq.P, Tirur) — Complainants

Vs

Kuwait Airways, 39/6820,
Polachirakkal, Ravipuram,
MG Road, Kochin PIN- 682815.
Represented by its Sales Manager.
(BY:Adv. Suvarna.A.P, Manjeri) — Opposite party

ORDER

By Sri. MOHAMED ISMAYIL C.V, MEMBER.

The complaint is filed under Section 35 of the Consumer Protection Act, 2019.

The averments in the complaint are in brief:-

1. The complainants are husband and wife and they are practising doctors. They had purchased air tickets of the opposite party through a travel agency to fly from Cochin to Barcelona with a stopover at Kuwait Airport. The trip was scheduled on 30/11/2023. They also availed return tickets of the opposite party scheduled to reach at Cochin Airport on 11/12/2023 with a stopover at Kuwait Airport. The return trip was scheduled to commence on 10/12/2023 at 14:05 hours from Madrid to Kuwait Airport. But their flight No. KU 134 took off only at 15:20 hours and it had rerouted to Doha airport instead of landing at Kuwait. The reason for diversion was adverse weather as stated by the opposite party. It is alleged that no further explanation was given by the opposite party. The flight was landed in Doha Airport at 00:30 hours on 11/12/2023. But no information was given by the opposite party with regard to journey to Cochin and unreasonable delay in Doha airport had caused mental agony and hardship to the complainants and even affected their plans to return to Cochin Airport as scheduled. It is pleaded that the complainant had purchased business class tickets, but amenities like food and stay were not provided by the opposite party and even denied access to business class lounge. The opposite party had given only food coupons for QR 40 resulting additional expenses for availing food and amenities. It is alleged that the complainants had spent more than 12 hours of time in Doha Airport without any assistance from the opposite party. Finally the Aircraft was scheduled to fly at 14:05 hours and after endurance in aircraft, they landed in Kuwait Airport at 16.05 hours. But, unfortunately Kuwait Aircraft to Cochin was already been departed causing further chaos in Kuwait Airport. It is averred that the opposite party had issued new boarding passes for Aircraft KU 357 to Cochin which was rescheduled to depart 17:20 hours on 11/12/2023. After completion of formalities like security clearance and checked in, the complainants were boarded the Aircraft. But the officials of opposite party barged into the Aircraft and mercilessly ordered the complainants to leave the Aircraft. They treated the complainants as criminals and humiliated publically and thereafter forcefully evicted from the Aircraft. The acts of the opposite party caused mental agony and distress to the complainants. It is alleged that the Aircraft left airport leaving their seats empty, as result the complainants were stranded in Kuwait Airport without any assistance or support. According to the opposite party, the issuances of boarding passes were happened due to technical error. After a lengthy process of discussions, the opposite party arranged seats in Emirates Aircraft to Cochin via Dubai. It is alleged that the acts of the opposite party are amounted to deficiency in service and unfair trade practice. On 15/01/2024, the complainants were issued legal notice claiming compensation from the opposite party. But they did not respond to the lawful demand of the complainants. The deficient acts of the opposite party caused additional expenses to the complainants. The opposite party neglected the complainants and failed to provide decent stay and food and reached at destination after 24 hours of delay than originally scheduled. The opposite party was bound to give timely information in case of delay or cancellation of Aircrafts. The complainants were spent more than 12 hours in Doha Airport due to deficient service of the opposite party and no proper explanation was given by them. The opposite party was liable to operate the Aircraft as scheduled. So the complainants claimed compensation for the sufferings of loss and hardship and mental trauma resulted due to deficient acts. The complainants had spent Rs.4,81,960/- for business class tickets and also spent Rs.25,000/-for food and amenities. The opposite party did not provide basic amenities while spending more than 12 hours in Doha airport. So the complainants prayed for directions to the opposite party to pay Rs.1,90,00,000/- (Rupees One crore ninety lakh only) as compensation for the sufferings of loss and hardship resulted due to deficiency in service, to pay Rs. 4,81,960/- as the cost of air tickets, to refund Rs.25,000/- as additional expenses incurred for food and other necessities. The complainants have claimed interest at the rate of 12% from opposite party to the entire amount till the date of realisation and also cost of the proceedings.

2. The Commission issued notice to the opposite party on 05/8/2024 and the same was received by the opposite party on 12/08/2024. But the opposite party failed to submit written version within time limit as prescribed by the statute. The written version filed on 12/11/2024 only. Hence the Commission declined to accept the contentions raised in written version.

3. The complainants have adduced evidence by way of proof affidavit and also submitted documents in support of their pleadings. The documents are marked as Ext.A1 series to A5. Ext.A1 series documents are the copy of legal notice dated 15/01/2024 and its postal receipt. Ext.A2 document is the copy of postal acknowledgement card dated 17/01/2024 showing delivery of legal notice to the opposite party. Ext.A3 document is the copy of travel summary. Ext. A4 series documents are the copies of boarding passes issued by the opposite party. Ext.A5 document is the copy of Tax invoice showing purchase of air tickets of the opposite party. The opposite party had submitted affidavit along with documents. But the

Commission cannot consider evidence from the side of the opposite party as they failed to submit written version within time limit. It is trait of law that evidence without pleadings cannot be acceptable.

4. Heard the complainants and the counsel of the opposite party in detail. The opposite party also submitted notes of argument. The Commission examined entire records available for scrutiny and arguments of the opposite party. Thereafter the Commission considered below points for the decision of the matter:-

i. Whether the acts of the opposite party are amounted to deficiency in service?

ii. If deficiency in service is proved from the side of the opposite party, whether the complainants are entitled for reliefs as prayed in the complaint?

Point No.(i):-

5. The arguments of the complainants are that they had stranded more than 12 hours in Doha airport due to delayed flight operation by the opposite party and they failed to provide food and amenities to the complainants and also forcefully disembarked from aircraft though boarding passes were issued by the opposite party. The act of the opposite party caused sufferings of mental agony, hardship, humiliation and financial loss to the complainants. It is further argued that no proper explanation was given by the opposite party with regard to delayed flight.

6. It has come out in evidence that the complainants had purchased business class air tickets from the opposite party to fly from Cochin to Barcelona and to return from Madrid to Cochin. Ext.A3 and Ext.A5 documents produced by the complainant proved the pleadings in that regard. The scheduled journey started on 30/11/2023 and return to Cochin was fixed on 10/12/2023. The arrival time was fixed on

11/12/2023 at 7.50. The complainants have produced Ext. A3 document to prove details of journey. It has also come out in evidence that no issues were arisen during their onward journey to Barcelona. The grievances of the complainants are that the return flight from Madrid to Cochin via Kuwait was diverted to Doha airport instead of Kuwait Airport. The diversion was made without prior notice. Due to diversion of flight the complainants could not reach at Cochin Airport as scheduled. According to the complainants, the scheduled time of departure was 14:05 hours on 10/12/2023 from Madrid Airport. But flight took off only at 15.20 hours. No proper explanation was given by the opposite party for the reason of diversion to Doha airport though complainants were enquired many times. The argument of the complainants revolved around the ordeal suffered at Doha Airport. It has come out in evidence that the complainants had spent 12 hours in Doha airport without providing required amenities by the opposite party. The opposite party issued boarding passes to another flight, but the complainants were forcefully evicted from their allotted seats and disembarked from the flight by the employees of the opposite party.

7. The argument of the opposite party is in tune with the contentions raised in the version. The opposite party admitted issuance of air tickets to the complainants as well as delay happened to return trip of the complainants. The flight from Madrid to Kuwait city was diverted to Doha airport due to bad weather condition prevailed in Kuwait. Hence, the opposite party is not liable for diversion of the flight and consequential delay happened in Doha airport. The diversion was made for ensuring safety of flight and passengers. It is further argued that new boarding passes were issued to the complainants in Doha Airport for Aircraft KU 357 to Kochi. The boarding passes were issued to the complainant with specific direction that they should not directly board the flight, but first to visit the transit desk to confirm the availability of seats. But complainants did not follow instructions given by the opposite party and directly went to the gate of Aircraft AU 357. On final checking before departure it was found that the boarding passes of the complainants were invalidated due to technical reasons. Hence they were politely asked to deboard the aircraft. There was no misconduct from the part of the opposite party. It is argued that the opposite party had provided food coupons for QR 40 to the complainants and also given access to Oryx Lounge at Doha Airport. It is categorically argued that opposite party was not liable to pay any compensation in respect of any delay or cancellation due to meteorological conditions.

8. The arguments forwarded by the opposite party cannot be accepted as it lack support of evidence. In the evaluation of available evidence, the Commission find that the opposite party had committed deficiency in service towards the complainant. The Commission find that the flight from Madrid to Kuwait was diverted without valid reasons. It has come out in evidence that the opposite party did not disclose reason for diversion. There is no documentary evidence to show that bad weather condition prevailed in Kuwait. Moreover, it is also proved that the complainant were forcefully deboarded from flight No. KU 357, though they were provided with boarding passes as per Ext. A4 series documents by the opposite party. In addition, it has come out in evidence that the opposite party failed to provide food and amenities in accordance with the ticket category availed by the complainants. The complainants were scheduled to arrive on 11/12/2023 at 7:50 at Cochin Airport as per Ext. A3 document. But due to the deficient act of the opposite party the complainants were reached at Cochin Airport more than 24 hours later than originally scheduled. In Chairman and Managing Director Indian Airlines & 2 Ors V. C.V. Joseph & 3 Ors 1(2024) CPJ 95 (NC), the Hon'ble National Commission categorically stated that the opposite party airline cannot take recourse to unilaterally determined rules and guidelines which gives unbridled powers/ protection to the airline Company to have right without assigning any reason to cancel, advance, rescheduled, over fly or delay the commencement or continuance of the flight or alter the stopping place or deviate from the rout of the journey or to change type of the aircraft in use without incurring any liability in damages or otherwise to the passengers or any other persons or any ground whatsoever. Hence the Commission find that the complainant had unequivocally proved deficient act and the consequential pain and sufferings endured by the complainant before this Commission.

Point No.(ii):-

9. After considering entire facts and documents available for scrutiny, the Commission find that the opposite party is liable to pay reasonable compensation to the complainants for the sufferings of mental agony and inconvenience. Though the complainants are argued for compensation of Rs.1,90,00,000/- from the opposite party, but the Commission cannot consider the same as prayed. It has come out in evidence that the complainants are practicing doctors and they had sustained mental agony and inconvenience due to the acts of the opposite party. It is also come out in evidence that the complainants were evicted from the flight without valid reason.

The complainants could not return to India as per schedule. So the Commission find that the opposite party is liable to pay Rs. 10,00,000/- as reasonable amount of compensation to mitigate the sufferings of the complainants. The Commission cannot consider the prayer of the complainants to refund Rs. 4,81,960/- as cost of business class tickets along with interest at the rate of 12 %. It is find that no issues were raised onward journey of the complainants to Barcelona and no additional payment was made for their return trip to Cochin. So the Commission is not passing any order in that regard. The act of deficiency in service is found against the opposite party and liability is also fixed by this Commission. The Commission is also declined to pass an order with regard to prayer for refund of Rs. 25,000/- as additional expenses incurred for food and other necessities as there is no documentary evidence from the side of the complainants to assess actual loss. The Commission consider the fact that the complainants are forced to approach this Commission to redress his grievances, hence the opposite party is liable to pay cost of the proceedings to the complainants. The Commission find that the opposite party is liable to pay Rs. 10,000/- to the complainants as cost of the proceedings. On the basis of above made discussion, the Commission allow the complaint with following directions:-

1) The opposite party is directed to pay Rs.10,00,000/-(Rupees Ten lakh only) to the complainants as compensation for the sufferings of mental agony and inconvenience .
2) The opposite party is directed to pay Rs.10,000/- (Rupees Ten thousand only) to the complainants as cost of proceedings.

The opposite party shall comply this order within 30 days from the date of this order otherwise entire amount shall carry interest at the rate of 9% per annum from the date of order till the date of realisation.

(Dictated to the Confidential Assistant Smt. Reena.C.P transcribed and typed by her, corrected by me and pronounced in the Open Commission on this 20th day of February, 2025.)

Sd/-
MOHANDASAN K., PRESIDENT

Sd/-
PREETHI SIVARAMAN C., MEMBER

Sd/-
MOHAMED ISMAYIL C.V., MEMBER

GOVERNMENT OF KERALA

CONSUMER DISPUTES REDRESSAL COMMISSION
MALAPPURAM

By order of the Commission

Assistant Registrar
District Consumer Disputes
Redressal Commission, Malappuram

APPENDIX

Witness examined on the side of the complainant : Nil

Documents marked on the side of the complainant : Ext.A1to A5

Ext.A1 : Series documents are the copy of legal notice dated 15/1/2024 and postal receipt.

Ext.A2 : Document is the copy of postal acknowledgement card dated 17/1/2024 showing delivery of legal notice to the opposite party.

Ext.A3: Document is the copy of travel summary.

Ext.A4: Series documents are the copies of boarding passes issued by the opposite party.

Ext.A5: Series documents are the copies of Tax invoice showing purchase of air tickets of the opposite party.

Witness examined on the side of the opposite party : Nil

Documents marked on the side of the opposite party : Nil

Sd/-
MOHANDASAN K., PRESIDENT

Sd/-
PREETHI SIVARAMAN C., MEMBER

Sd/-
MOHAMED ISMAYIL C.V., MEMBER

DESPATCHED
Date: 12/03/2025

By order of the Commission

Assistant Registrar
District Consumer Disputes
Redressal Commission, Malappuram

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
MALAPPURAM