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RAVNEET SINGH BAGGA

v.

M/S. KLM ROYAL DUTCH AIRLINES AND ANR.

NOVEMBER 2, 1999

B

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Consumer Protection Act, 1986.

C *Sections 2(g) and (o)—Deficiency in service—Bonafide dispute—Action or final decision in good faith—Whether amounts to deficiency in service—Held, if the action is found to be in good faith, there is no deficiency in service under the Act—Deficiency in service has to be distinguished from the tortuous acts.*

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Words & Phrases—'Deficiency' - Meaning of.

E Appellant-Complainant had booked himself from New Delhi to Amsterdam and further from Amsterdam to New York with respondent No. 1 for 18th October, 1991 as he had an important business appointment on that day and wanted to reach New York before 1630 hrs. Complainant also booked himself on an earlier flight of respondent No. 2 from Amsterdam to New York while retaining his earlier booking. Since doubts were expressed about visa of the complainant at Amsterdam, proceedings were initiated for verification of his visa. On finding the visa valid and authentic, complainant was placed on the first available flight of respondent No. 1 to New York and reached there at 2000 hrs. on the same day.

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G Appellant filed a Complaint under the Consumer Protection Act, 1986 against the respondents before the National Consumer Disputes Redressal Commission on the ground of negligence and deficiency in service and alleged that he suffered emotional distress and business loss due to his late arrival in New York. The National Commission dismissed the complaint on the ground that the verification procedure was initiated as the staff of respondent No. 1 at Amsterdam had *bonafide* suspicion or doubt about the visa, and it was completed expeditiously; and that there was no evidence that the complainant had contacted the counter of respondent No. 2 and so he cannot set up a claim against it. Against the order of the National Commission, the

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complainant has filed the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. 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 burden of proving the deficiency in service is upon the person who alleges it. The deficiency in service has to be distinguished from the tortuous acts. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist on grant of relief under the Consumer Protection Act for the alleged acts of commission and omission which otherwise do not amount to deficiency in service. In case of *bonafide* disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed. If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service under the Consumer Protection Act. Inefficiency, lack of due care, absence of *bonafide*, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service. [326-H; 327-D]

1.2. Respondent No. 1 cannot be held to be guilty of rendering inefficient service because its staff at Amsterdam is proved to have acted fairly and in a *bonafide* manner keeping in mind the security and safety of passengers and the aircraft. The staff of respondent No.1 had found that the appellant was having two confirmed tickets from Amsterdam to New York-One in the flight of respondent No. 1 and the other in the flight of respondent No. 2 and that his photograph on the visa documents was a photocopy and not original which was unusual. In view of two bookings and the visa papers being doubtful, the staff of the respondent No. 1 Airlines took sometime to ascertain the truth and made all efforts to ensure that the complainant reached New York on the same day. The *bonafide* action taken by the staff of the respondent No.1 Airlines cannot be held to be a deficiency in service. [327-E-F-G]

2. The Complainant was not justified in preferring any claim against respondent No. 1 Airlines because he, admittedly, had booked his seat in the flight of respondent no. 2 from Amsterdam. It appears that the complainant never intended to have any service of respondent No. 1 for his onward journey from Amsterdam to New York. When no service was hired, there was no

A question of deficiency in it. So far as respondent No. 2 is concerned, no claim can be preferred against it as the complainant never approached its counter for the purposes of availing their service in his air passage from Amsterdam to New York. [327-G-H; 328-A]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8701 of 1997.

From the Judgment and Order dated 29.5.97 of the National Consumer Disputes Redressal Commission, New Delhi in O.P. No. 298 of 1993.

C Gopal Singh and Naresh S. Mathur for the Appellant.

S.C. Agrawala, Pramod Dayal, Sunil Gupta, M.R. Ramachandran, U.A. Rana and Arshi Sohail, for M/s. Gagrut & Co., for the Respondents.

The Judgment of the Court was delivered by

D **SETHI, J.** To attend his business commitments at New York on 18th October, 1991 the appellant booked his passage through the respondent No. 1 Airlines and as he could not reach in time allegedly on account of negligence and deficiency in service of the said respondent, he filed a complaint before the National Consumer Disputes Redressal Commission (hereinafter referred to as the "National Commission") praying therein for payment of US \$76,000 or the equivalent thereof in INR with interest @ 24% per annum from 18 October, 1991 to the date of the filing of the petition as also pendente lite and future interest at the same rate till realisation. He also claimed Rs. 5 lacs with interest, both pendente lite and future @ 24% per annum towards damages for an emotional distress, nervous shock, **E** pain and suffering and US \$450 or equivalent thereof in INR together with interest both pendente lite and future @ 24% per annum till realisation towards medical and transportation expenses. The claim was made not only against the KLM Airlines but also against the Trans World Airlines which was impleaded as respondent No. 2. The complaint was dismissed by the **F** National Commission vide the order impugned in this appeal. The order of **G** the National Commission is alleged to be against law, facts and the provisions of the Customer Protection Act, 1986 (hereinafter referred to as "the Act") and the prevalent practice of carrying the passengers in the Airlines.

H The facts, as alleged by the appellant, in his complaint are that he is a partner of M/s B.R. Exports, a firm based at Jaipur which is engaged in the

import of rough emeralds and export of cut and polished emeralds jewellery. A
 On 4 October, 1991 M/s Mian Teck Jewellery, Bangkok is stated to have
 placed an order upon the complainant for the supply of 16000 Carats of cut
 and polished emeralds which was to be exhibited at a Jewellery Exposition
 Fair. It was stipulated that any orders placed during exhibition for the emerald
 jewellery would be executed by the complainant's firm. M/s. Real Gems, New
 York vide a letter dated 2 October, 1991 informed the complainant that the B
 samples were available which could be inspected at their office at New York
 till closing on 18 October, 1991. The complainant, upon checking for the first
 available flight to New York, was informed by his travel agent that the earliest
 available flight was KLM Flight No. KL-872 departing New Delhi at 0525 hrs.
 on 18 October, 1991 with stop over at Amsterdam. The complainant was, C
 however, told that he could catch the connecting flight KL-640 departing
 Amsterdam for New York at 1315 hrs. from Schiphol Airport which was to
 reach New York at 1515 hrs at JFK Airport. He was issued ticket for Delhi-
 Amsterdam-New York-Amsterdam-Delhi Sectors for which he paid a total fare
 of Rs. 25,719. He had applied for US visa through M/s Delhi Express Travels,
 Travel Agents which was granted on 17 May, 1991 being valid for five years D
 with multiple entries. On 18 October, 1991 the complainant reported at the
 KLM counter at Indira Gandhi International Airport at New Delhi where his
 travel documents were checked. Finding no fault with any documents, the
 complainant was permitted to board KLM Flight No. KL872 to Amsterdam.
 While checking-in at Delhi, the Complainant enquired from the KLM staff at E
 the counter about the possibility of booking him in an earlier flight from
 Amsterdam to New York as he had an urgent business appointment there and
 wanted to reach before 1630 hrs. Appreciating his problem, the complainant
 was booked on TWA 815 departing Schipol Airport at 1105 hrs. Amsterdam
 time and arriving at JFK Airport at 1310 hrs. He claims to have continued to
 be booked at KL 641 also to New York from Amsterdam. On reaching F
 Amsterdam on 18th October, 1991 at 1015 hrs. Local time, he approached the
 KLM counter to know the location of TWA counter because he had been
 booked on the TWA Flight No. TWA 815 as was confirmed at Delhi and for
 which appropriate sticker had been placed on his KLM Ticket. At the KLM
 counter the complainant was asked about his US visa. When shown, the lady G
 attending the KLM counter is stated to have conceived suspicion about the
 genuinences of the visa requiring verification. The complainant submitted that
 there was no reason, justification or occasion for being subjected to verification
 procedure by KLM for the second time at Amsterdam because he had been
 cleared for travel at Delhi. The ground staff at Amsterdam was requested to
 institute proceedings for verifications as expeditiously as possible but the H

- A said staff was wilfully and consciously negligent which, according to the complainant, constituted "deficiency in service" within the meaning of the Act entitling him to claim damages. There was delay of about three hours in the institution of verification procedure. He was booked on a return flight to Delhi leaving Amsterdam on Sunday the 20th October, 1991. He was virtually confined at the Airport and not permitted to go outside. The complainant then
- B is stated to have contacted directly a senior official of the KLM at about 1300 hrs. and explained to him his predicament. The official examined the US Visa and found the same to be in order. He, however, observed as doubts have been expressed, he will follow the standard procedure of sending the passport of the appellant to the US Embassy at Amsterdam for verification
- C which would take about three hours. He advised the complainant to return to the counter at 1600 hrs. When he returned back at the counter the complainant was informed that his Visa had been found valid and authentic. The complainant then sought and was placed on the first available KLM flight to New York being KL 643 which departed from Amsterdam at 1800 hrs. and reached New York at 2000 hrs. American time on the same day. On
- D account of the exhaustion, both mental and physical, the complainant alleged that he developed 103 degree temperature during the flight and was subjected to extreme depression. On reaching New York, the complainant could not locate his baggage which had arrived before him. While waiting for his baggage, the complainant phoned up one of the partners of M/s Real Gems
- E at his residence and was informed that as the cost of retaining of consignment of 100,000 Carats of Brazilian Emerald Roughs was prohibitively high they could not retain the parcel beyond that day, and that it had been sold to another buyer. On account of the acts of commission and omissions of the respondents, the appellant had to suffer the business loss besides being subjected to mental tension and torture. On his return the complainant
- F addressed a letter dated 10 January, 1992 to respondent No. 1 stating all the relevant facts seeking an apology and compensation for the loss of business profits. He was informed vide letter dated 3rd February, 1992 that the respondent Airlines regretted the unfortunate experience undergone by the complainant and that the necessary investigation was to be conducted to
- G ascertain the truth. On 18 March, 1992, the complainant was informed about the result of the investigation with apology and a cheque of Rs. 2,500, as a goodwill gesture. The said cheque is claimed to have been received and deposited in his account in his absence. The appellant informed the respondent No. 1 that the cheque had been deposited in his absence and that the same was being adjusted under protest and without prejudice to his rights to
- H institute appropriate legal proceedings.

In reply filed on behalf of the respondent No. 1 it was submitted that the complaint filed by the complainant was totally misconceived which was liable to be dismissed. The allegations made in the complaint did not constitute any deficiency in service within the meaning of Section 2(g) of the Act. It was contended that the staff of the first respondent at the Schiphol Airport at Amsterdam acted in accordance with the requirements to ensure the proper verification for security reasons for benefits of the passengers and the Aircraft. There was no *malafide* intention or deliberate act on the part of the respondent No. 1 or its staff in undertaking the verification before allowing the complainant to board the Aircraft at Amsterdam. The ground staff is stated to have not made any allegations that the complainant's visa being forged and merely wanted to verify the visa as they had some doubts regarding the validity of the visa contained in the passport. The verification also became necessary because there were no confirmed tickets in the name of the respondent - one by TWA flight and the other by KLM flight. Immediately upon verification that the visa had been issued by the US Embassy validly which was authenticated, the complainant was allowed to travel by the next available flight to New York. There was a *bonafide* belief on the part of the KLM staff at Amsterdam that the verification of the complainant's visa was necessary and the staff acted on the basis of the said *bonafide* belief. One of the reasons for apprehension in the minds of KLM staff at Amsterdam was that the photograph on the visa issued to the complainant was a photocopy of the photograph and not the original photograph and further that the TWA staff had refused to allow the appellant to board their flight on account of the suspicion about the visa. The suspicion was further strengthened because the complainant had two confined tickets by two Airlines as noted hereinabove. There was no breach on the part of the respondent and its staff in regard to verification of the visa either at the first instance at Delhi or at Amsterdam Airport. The complainant was stated to have not suffered any loss on account of his alleged inability to reach New York within the time.

The National Commission found that in the facts and circumstances of the case, on account of earlier noted two factors the staff of KLM had *bonafide* suspicion or doubt and so verification procedure was initiated which was completed expeditiously, it concluded thus :

“In our view, there were adequate reasons and justification for KLM staff at Schiphol Airport to decide on the need to verify the Visa of the Complainant for USA. It has not been brought out in the cross-examination of Mr. Knoop of any *malafide* acts on the part of the

- A KLM staff. Mr. Knoops in his affidavit has affirmed that the Schiphol Airport in Amsterdam is equipped to handle thousands of incoming and outgoing international passengers including Indians details of which have reproduced above. The allegation of maltreatment or racial prejudice is denied by Mr. Knoops. It is highly improbable that the complainant was picked up for screening only because he was Indian.
- B The checking and screening for the validity of the travel documents is done as a measure of safety and security of the passengers as well as the legal obligation of the Airlines and we do not find any oblique motives of doing so in the case of the complainant.”
- C It further held that case set up against the TWA was an after thought which was not borne out from the earlier version given by the complainant in his letter on 10.1.1992. In the aforesaid letter the complainant had not made any allegations of negligence or deficiency of service attributable to TWA. The complainant is stated to have admitted in his affidavit that TWA flight was scheduled to depart after 50 minutes of his arrival at Schiphol Airport and
- D that the entire episode was at the KLM counter and not on the TWA counter. There was no evidence on record even to suggest that the complainant had contacted the TWA staff at its counter.

E Section 2(o) defines the “Service” to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Section 2(g) defines “deficiency” to mean any

F fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

G 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 burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency

H in service has to be distinguished from the tortious acts of the respondent.

In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of *bonafide* disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed. If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. 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 *bonafide*, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service.

In the instant case the respondent No. 1 cannot be held to be guilty of rendering inefficient service because its staff at Amsterdam is proved to have acted fairly and in a *bonafide* manner keeping in mind the security and safety of passengers and the aircraft. It is not denied that the staff had found that the appellant was having two confirmed tickets from Amsterdam to New York - one in KLM Flight and the other in TWA flight and that his photograph on the visa documents was a photocopy and not original which ordinarily was unusual. In view of two bookings and the visa papers being doubtful, the staff of the respondent Airlines took sometime to ascertain the truth and made all efforts to ensure that the complainant reached New York on the same day. The *bonafide* action taken by the staff of the respondent Airlines cannot be held to be a deficiency in service. Looking from another point, the complainant was not justified in preferring any claim against the said Airlines because he, admittedly, had booked his seat in the TWA flight from Amsterdam. It appears that the complainant never intended to have any service of respondent No. 1 for his onward journey from Amsterdam to New York. When no service was hired, there was no question of deficiency in it. So far as TWA is concerned, no claim can be preferred against it as, admittedly, the complainant never approached their counter for the purposes of rendering their service in his air passage from Amsterdam to New York. It is true that respondent No. 1 KLM failed to cancel complainant's ticket on their flight from Amsterdam to New York but that failure, in any way, did not

- A affect the onward journey of the complainant. The verification was necessitated on account of the unusual photocopy of his photograph on the visa documents. The National Commission also examined his earlier letters and the affidavit filed before it and found on facts that there existed some discrepancies. It was found that the complainant had been taking contradictory stands. On perusal of the whole record we are of the opinion that the respondents could not be held guilty of deficiency in service entitling the complainant for compensation as claimed by him. It is true that for unforeseen reasons and suspicious circumstances not attributable to the complainant he had been subjected to great harassment and mental torture but it is equally true that for those circumstances none of the respondents was guilty. Despite holding a belief that they were not responsible for any deficiency in service respondent had already tendered unconditional apology to the complainant and paid him token compensation. The case of the appellant for the grant of relief under the Act was not established.
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- D There is no illegality or error of jurisdiction in the order of the National Commission requiring our interference.

Accordingly, the appeal is dismissed but without any order as to costs.

A.K.T.

Appeal dismissed.