

**Spicejet Ltd. vs Ranju Aery on 29 December, 2015**

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
U.T., CHANDIGARH

First Appeal No.:347 of 2015

Date of Institution:23.12.2015

Date of Decision: 29.12.2015

Spicejet Ltd., 319, Udyog Vihar, Phase-IV, Gurgaon-122016.

.....Appellant/Opposite Party

V e r s u s

Ranju Aery w/o Sh.Abnesb Dhadwal, R/o #2361, Sector 19-C,  
Chandigarh.....Respondent/Complainant

Appeal under Section 15 of the Consumer Protection Act, 1986.

BEFORE: JUSTICE JASBIR SINGH (RETD.), PRESIDENT.

MR. DEV RAJ, MEMBER.

MRS. PADMA PANDEY, MEMBER Argued by: Sh.Amit Punj,  
Advocate for the appellant.

PER JUSTICE JASBIR SINGH (RETD.), PRESIDENT

In a case, where a consumer has purchased air tickets online i.e. through internet, in case of deficiency in providing service, at which place, he/she could file a consumer complaint for redressal of his grievance, is the core question, which needs consideration.

In the past one and a half decade, E-commerce has emerged as a major source of business. Almost all articles of use can be bought and services availed online through internet. There is no standard definition for the term E-commerce, as such, it is used to indicate a mode of conducting business through electronic means, distinct from the conventional physical means. In the above process, in a single transaction, two or more than two parties may be involved.

In the course of life, disputes are bound to occur in such like business activities. In case of sale and purchase through internet, question of territorial jurisdiction gets complex, mainly because the process is borderless. E-commerce contracts are conceptually similar to traditional commercial contracts. Vendors offer their products, prices, terms and conditions to the buyers. The buyers after considering the options, negotiate the prices, terms & conditions and then place orders and make the payment. Thereafter, the vendor delivers the purchased products to the buyers. The Hon'ble Supreme Court of India in Trimex International FZE Limited Dubai Vs. Vedanta Aluminum Limited 2010 (1) S.C. 574 recognized the validity of online transactions and held that emails exchanged between the parties regarding mutual obligations constitute a contract.

Qua territorial jurisdiction of a District Forum, Section 11 (2) of the Consumer Protection Act, 1986 (in short the Act) reads thus:-

"A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction-

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business, or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution or
- (c) the cause of action, wholly or in part, arises".

It is clearly provided that a complaint can be filed before the District Forum, within whose jurisdiction the opposite party(s) resides, or carries on business or has a branch



office or personally works for gain. It is further provided that the complaint can be filed in a place, before a Forum, where any of the opposite parties actually and voluntarily resides etc. and personally works for gain. Above filing will be subject to permission granted by the District Forum or consent of the opposite parties, not residing within the jurisdiction of a District Forum, where complaint was filed. Provision also stipulates that the complaint can be filed before a District Forum where cause of action wholly or in part, arises. Similar provision exists qua territorial jurisdiction of the State Consumer Disputes Redressal Commission, as per Section 17 (2) of the Act.

With the growth of E-commerce and commercial activities over the internet, it has become possible for conducting business across the world without actual physical presence at every place. There is a widespread usage of plastic money i.e. credit and debit Cards, which has facilitated those operations. At times, in such like cases, the consumer may get a raw deal, as internet dealings are done with unknown parties, operating far away from different places.

In the instant case, the complainant/appellant and her family members, purchased air tickets online, through internet from Chandigarh, for a holiday to Bagdogra. The tickets were booked through yatra.com, for journey on 23.06.2015. Tickets for return journey were booked from Bagdogra to Kolkata and connecting flight of the appellant/opposite party from Kolkata to New Delhi, for 30.06.2015. She paid an amount of Rs.70,900/-, through debit card, for the said purpose. It is her grievance that at the time of return journey, when she alongwith her family members were waiting at Kolkata Air port, for boarding connecting flight to New Delhi on 30.06.2015, she came to know that the flight has been cancelled. Alternative flight was not offered/arranged. Staff of the appellant was non-cooperative. She and her husband were to join duties on 01.07.2015. After arranging money from their relatives at Kolkata, they purchased tickets of another airlines from Kolkata to New Delhi via Mumbai, after spending an amount of Rs.80,855/-. They reached Chandigarh through bus. It was further stated by her that she got information under the Right to Information Act, 2005, from Airport Authority of India, showing that 'the only flight' of the appellant was not operated, whereas other 128 flights departed as per schedule. Seven flights were late and only flight of the appellant was cancelled, due to operational reasons. It was also averred that her amount paid to the appellant was not refunded.

Despite notice when the appellant failed to put in appearance, by raising presumption in terms of Sub-Clause (2) of Regulation 10 of the Consumer Protection Act, 1986 (in short the CPA 1986) exparte proceeding were taken up against it, vide order dated 20.11.2015.

The respondent/complainant led evidence, in support of her case.



Perusing evidence brought on record by the respondent, consumer complaint filed by her was allowed by the Forum, granting following reliefs:-

"In the light of above observations, we are of the concerted view that the Opposite party is found deficient in rendering proper service to the complainant. Hence, the present complaint of the Complainant is allowed against the Opposite Party. The Opposite party is directed as under:-

[a] To refund an amount of Rs.80,885/- minus the air fare between Kolkata to Delhi of the cancelled flight along with interest at the rate of 9% p.a. from the date of cancellation of flight i.e. 30.6.2014 till it is paid;

[b] To pay an amount of Rs.1,25,000/- to the complainant as consolidated amount of compensation for causing mental agony and harassment on account of deficiency in service;

[c] To pay litigation expenses to the tune of Rs.10,000/-

The above said order shall be complied within 45 days of its receipt by the Opposite party; thereafter, it shall be liable to pay an interest @18% per annum, on the amount as mentioned at sub-para [a] above from the date of cancellation of flight i.e. 30.6.2014 till it is paid, and also on the amount as mentioned at sub-para [b] above, from the date of filing of the complaint till it is paid, apart from paying litigation expenses."

Feeling aggrieved, the instant appeal, has been filed by the appellant/Opposite Party.

We have heard Counsel for the appellant, at the preliminary stage, and, have gone through the evidence, and record of the case, carefully.

The question which has been set down for consideration, at the beginning of this order, was raised by Counsel for the appellant, to say that the order under challenge could not have been passed by the Forum, for want of territorial jurisdiction. To support his argument, he has placed reliance upon a judgment of the National Consumer Disputes Redressal Commission (in short the National Commission), titled as Dr.Ravi Ghai and ors. Vs. M/s Make My Trip (India) Private Limited and another, Revision Petition No.2193-2194 of 2012 decided on 22.05.2013, to say that in the case of purchase of tickets online through internet, only the Forum, where Headquarter of the appellant is situated, will have territorial jurisdiction to entertain and decide this complaint.

Before accepting or rejecting above contention, we need to look into the purpose and spirit, for which the Act was enacted and how it is to be interpreted. Real purpose of the Act was to empower the consumers to take on the might of large corporations



and also preventing unscrupulous entities in business, from taking undue advantage of the weak position, in which the consumers are placed. Noble idea was to protect interests of the consumer and for the purpose, to establish mechanism, in which efficacious and economical justice is imparted to them. Reading of the provisions of the Act makes it clear that it is consumer friendly enactment. When the Act was enacted in the year 1986, E-commerce virtually was not in practice. At present, it is a digital era, in which large number of transactions are being conducted online through internet.

How to protect the consumers, under above circumstances, needs consideration? In Lucknow Development Authority Vs. M.K. Gupta (AIR 1994 SC 787), it was specifically opined by the Supreme Court of India that the provisions of the Act are to be construed in favour of the consumers, to achieve purpose of enactment, as it is a social benefit oriented legislation. In State Vs. S.J. Choudhary (AIR 1996 SC 1491), the Supreme Court of India also observed as under:-

(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters.

To interpret provisions of an Act, rational approach and not a technical approach, needs to be adopted. The provisions of the Act need to be interpreted broadly to protect interest of a poor consumer.

In the present case, air tickets were booked through yatra.com. For that, amount was paid through debit card. Money was transferred from a bank account of the respondent, situated in Chandigarh, to the bank account of the appellant, at Gurgaon, where headquarter of the appellant is situated. The said tickets which were purchased through internet, were delivered to the respondent, at Chandigarh. By making reference to the order passed by the National Commission, in the case of Dr. Ravi Ghai and ors.' case (supra), it was argued by Counsel for the appellant that only the Consumer Forum at Gurgaon, has territorial jurisdiction, to entertain and decide the complaint. If the said contention is accepted, it will run contrary to the spirit of CPA 1986, which provides speedy inexpensive and hassle free redressal of the grievances of the consumers. In case, arguments of Counsel for the appellant is accepted, it would amount to clogging down the District Forum at Gurgaon, as



complainants throughout the Country, will approach there, for filing their complaints and further it will be very costly for anybody, to travel to Gurgaon and defend his/her case. Such a stipulation was not contemplated, under the provisions of the CPA 1986.

As per established law, contracts can be concluded through telephone, where the parties are placed at distance, without having direct access to each other. In such a situation, contract would be completed at a place, where its acceptance is communicated. Because of advancement & technology and rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence at a place, which is located at a distance from the place, where it has a physical presence. In the present times, the availability of goods and services, through the website at a particular place, has virtually become the same thing, as a seller having shops, in that place, in the physical sense. Besides as above, ordinarily existence of offer and its intimation, results in a contract and a suit can be filed at a place, where acceptance was communicated. Further more performance of a contract forms a part of cause of action and grievance can be redressed by filing a suit, qua its breach at a place, where contract should have been performed. It was so said by the Hon'ble Supreme Court of India in A.B.C. Laminart Pvt. Ltd. and anr. Vs. A.P. Agencies, Salem, 1989 AIR 1239=1989 SCR (2) 1, while interpreting the provisions of Section 20 (c) of the Code of Civil Procedure.

The provisions of Section 11 (2) of the CPA 1986 are akin to the provisions of Section 20 (c) of the Code of Civil Procedure. The pronouncement of law, as made by the Hon'ble Supreme Court of India, in the case of A.B.C. Laminart Pvt. Ltd. and anr.'s case (supra) would apply in full force to the Consumer Forums, when trying complaints under the CPA 1986. Not only this, the Hon'ble Supreme Court of India in the case of Marine Container Services South vs Go Go Garments (AIR 1999 SC 80) (Para 4), also held that the Contract Act applies to all litigants, including the litigants under the CPA 1986. In view of above, it can safely be said that for the purpose of consumer complaints, relating to normal contracts for services and/or goods, cause of action arises inter alia at any of the places, where; (a) the contract is made; and/or (b) where acceptance of the contract is communicated and/or (c) where the contract is performed or is to be performed and/or (d) where money under the contract is either payable or paid and/or (e) where repudiation of the contract is received, if any. Consequently, territorial jurisdiction over a consumer complaint also lies with the Consumer Fora situated at any place, where any of the aforementioned cause of action arises.

The above said observation was made qua conventional type of contracts, as to how the said principle can be made applicable to the transactions effected through internet, for the said purpose, we are required to look into the provisions of Information Technology Act, 2000 (I.T. Act 2000). The preamble to the I.T. Act, 2000, reads thus:-



"An Act to provide legal recognition for the transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as Electronic Commerce, which involve the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filings of documents with the Government agencies and further to amend the Indian Penal Code, Indian Evidence Act, 1872, The Bankers Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto."

The I.T. Act, 2000, reflects the growing importance of internet in our life. The main issues in this I.T. Act, 2000, that are looked into include hacking, privacy, regulating authority and punishments for wrongdoers. Although this law does not focus on the interest of online shoppers, however, some of its provisions are important to be noted qua interest of the consumers, when making shopping online. For the purpose of this discussion, Section 13 (3) of the I.T. Act, 2000, reads thus:-

"Save as otherwise agreed between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business."

In the present case, offer was made to purchase air tickets through internet. It was accepted and tickets, through internet, were sent on payment of money, to the complainant, at Chandigarh. In terms of above provisions, it can safely be said that the air tickets would be taken to have been sent at complainant's place of business/residence. The acceptance of contract would also be deemed to have been communicated at the above place. By reading the provisions of CPA 1986; I.T. Act, 2000; and with the help of ratio of the judgment in A.B.C. Laminart Pvt. Ltd. and anr.'s case (supra), we can safely hold that, where contracts for services and/or goods are entered into over the internet (or online as such transactions are commonly referred to), then, for the purposes of consumer complaints, part of the cause of action arises inter alia, at the complainant's place of business, if acceptance of the contract is communicated to her through the internet, including the medium of email. Further, irrespective of the fact, whether or not the contract is one made over the internet, cause of action would also continue to arise at any of the places (a) where the contract is performed or is to be performed or (b) where money under the contract is either payable or paid or (c) where repudiation of the contract is received, if any. As such, it cannot be disputed that a Consumer Fora is competent to entertain a consumer complaint, even if only an infinitesimal part of cause of action arises within its territorial jurisdiction. As a result, territorial jurisdiction over a consumer complaint would lie with the Consumer Fora situated at any place, where any of the aforementioned causes of action arises. This, of course, is in addition to the other places, where a consumer may choose to file a complaint in accordance with the other provisions of Section 11 (2) of the CPA, 1986.



Having said that, we cannot forget that all consumers of our country do not necessarily have a place of business. Take the case of a student or a housewife or an employee, who has no place of business and who places an order over the internet from his/her home. As such, they cannot be denied refuge, under territorial jurisdiction of the local Consumer Fora. That would be discriminatory and unfair. In fact, they are even more vulnerable and need even more protection as consumers. The concept of place of residence is not new and already exists in Section 11 (2) of the CPA 1986. But the point is that place of residence is not unknown to law, for the purpose of territorial jurisdiction. We, therefore, further add an extension that, in case, a consumer does not have a 'place of business' then the said term as stated in the paragraphs above, is to be read as place of residence.

It may be stated here that the CPA 1986 is a benevolent legislation, the main object of which is not only to protect the consumers but also to provide them a speedy and simple dispute redressal mechanism, free from hassle.

The Hon'ble National Commission, in Dr. Ravi Ghai and ors. Case (supra) when rendering judgment to the contrary, did not notice the ratio of the judgment passed by the Hon'ble Supreme Court of India in A.B.C. Laminart Pvt. Ltd. and anr.'s case (supra) and also the provisions of I.T. Act 2000. Further, as has been noted above, the Hon'ble Supreme Court of India, has said in a case of Trimex International FZE Limited Dubai 's case (supra) that emails exchanged between the parties, online, i.e. through internet constitutes a contract.

Further contention of Counsel for the appellant that compensation awarded to the respondent, is on the higher side, is devoid of merit. We are of the opinion, that it is rather on the lower side. The air tickets were booked by the respondent, online, through internet from Chandigarh, for a holiday to Bagdogra, alongwith her family members, through yatra.com, for journey on 23.06.2015. Tickets for return journey were booked from Bagdogra to Kolkata and connecting flight of the appellant/opposite party from Kolkata to New Delhi, for 30.06.2015, for which, an amount of Rs.70,900/-, was paid through debit card. When family members were waiting at Kolkata Airport, for boarding connecting flight to New Delhi on 30.06.2015, the complainant came to know that the flight has been cancelled. Alternate flight was not offered/arranged. The complainant was lucky to have relatives in Kolkata, from whom, money was borrowed and an amount of Rs.80,855/- was paid to another airlines to reach New Delhi via Mumbai, from where they travelled through bus, to reach Chandigarh. Lot of harassment might have been caused to the entire family of the respondent including her, which necessitated grant of compensation. In this appeal also, no explanation has been given by the appellant, as to what were the reasons, for which flight was not operated on the said date, that was the only flight, which was cancelled. As such, no ground, whatsoever is made out by the appellant, to set aside the order under challenge.

No other point, was urged, by Counsel for the appellant.



In view of the above discussion, it is held that the order passed by the Forum, being based on the correct appreciation of evidence, and law, on the point, does not suffer from any illegality or perversity, warranting the interference of this Commission.

For the reasons recorded above, the appeal, being devoid of merit, must fail, and the same is dismissed, at the preliminary stage, with no order as to costs. The order of the Forum is upheld.

Certified copies of this order, be sent to the parties, free of charge.

The file be consigned to Record Room, after completion.

Pronounced.

29.12.2015 Sd/-

[JUSTICE JASBIR SINGH (RETD.)] PRESIDENT SD/-

(DEV RAJ) MEMBER Sd/-

(PADMA PANDEY) MEMBER Rg







order passed by the District Consumer Disputes Redressal Forum, dated 30.11.2015, in Consumer Complaint No. 588/2015, filed by the present respondent Ranju Aery, allowing the said complaint, was upheld.

2. The facts of the case are that the complainant Ranju Aery booked air tickets online from Chandigarh to Bagdogra (West Bengal) for her and her family members through the website Yatra.com for travel from New Delhi to Bagdogra on 23.06.2015 and return journey from Bagdogra to Kolkata and the connecting flight of the opposite party (OP) Airlines M/s Spicejet Ltd. from Kolkata to New Delhi for 30.06.2015. An amount of Rs. 70,900/- was paid by the complainant through her debit card on 12.06.2015 for the said tickets. The complainant started her return journey on 30.06.2015 from Bagdogra to Kolkata by Indigo Airlines and reached the airport at Kolkata at 1.30 pm to board the connecting flight of the OP Airlines SG256 from Kolkata to New Delhi, scheduled for 20.40 hours. The complainant's family members were having the boarding passes for the said flight. However, they were shocked to know that the said flight of the OP Airlines had been cancelled. The OP Airlines did not provide any alternative arrangement to the complainant and her family for travel to New Delhi. The complainant was, therefore, forced to buy tickets for another flight, operated by the Jet Airways from Kolkata to Mumbai, with connecting flight to New Delhi, departing at 20.40 hours from Kolkata. The complainant spent an amount of Rs. 80,885/- for five tickets for the said journey. The complainant and her family reached New Delhi by the said flight, but they missed the Volvo bus, which was supposed to carry them to Chandigarh. It is stated that the complainant and her family were scheduled to reach New Delhi at 22.50 hours on 30.06.2015, but due to the cancellation of the flight of the OP Airlines and travelling by another flight, they reached New Delhi at 5 am on 01.07.2015 and consequently, they were late in reaching Chandigarh. It is stated in the consumer complaint that the complainant obtained information about the status of flights, departing from Kolkata on 30.06.2015, from which, it was revealed that 128 flights out of the scheduled 129 flights had departed from Kolkata on that day, and it was the sole flight of the OP Airlines that was cancelled due to reasons best known to them. The complainant alleged that the OPs did not refund the fare charged from them for the cancelled flight, neither they provided another alternative flight. The complainant filed the consumer complaint in question, seeking directions to the OPs to refund the ticket amount of Rs. 20,000/- alongwith interest @ 12% per annum for the cancelled flight. They also sought directions to the OPs to pay the additional amount of Rs. 80,885/- paid by them for the alternative flight. The complainant also demanded Rs. 1.5 lakhs as compensation for mental harassment and Rs. 22,000/- as litigation charges.

3. The District Forum decided the complaint vide their order dated 30.11.2015 and the said order was passed ex-parte against the OP Airlines. The District Forum directed the OP Airlines to refund an amount of Rs. 80,885/- to the complainant after deducting the airfare between Kolkata to New Delhi for the cancelled flight, alongwith interest @ 9% per annum from the date of cancellation of the flight till realisation. They also directed the OP Airlines to pay an amount of Rs. 1.25 lakhs as compensation for harassment and Rs. 10,000/- as litigation cost. Being aggrieved against the said order of the District Forum, the OP Airlines filed an appeal before the State Commission and the said appeal having been dismissed at preliminary stage vide impugned order of the State Commission, the OP Airlines is before this Commission by way of the present Revision Petition.

4. The learned counsel for the petitioner submitted at the time of arguments that the District Forum had passed their order at their back, as they were not properly served in proceedings before the said Forum. The order passed by the District Forum, duly confirmed by the State Commission was,



therefore, bad in the eyes of law. The learned counsel stated that the petitioners are prepared to refund the cost of the tickets for the cancelled flight, if the same had not been done already. The learned counsel also stated that the directions to pay compensation of Rs. 1.25 lakhs to the complainant, should also be set aside.

5. Per contra, the respondent/complainant, who appeared in person, stated that the plea of having been proceeded against ex-parte before the District Forum, had not been taken by the petitioner in proceedings before the State Commission. The complainant and her family members had to undergo a lot of mental harassment at the hands of the OP Airlines, because of the cancellation of the flight. The orders of the consumer fora below were, therefore, in accordance with law and should be upheld.

6. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

7. The first issue that merits consideration in the case is whether the petitioner/OP were duly served in proceedings before the District Forum and whether the ex-parte order passed against them is justified or not. In this regard, the record of the District Forum has been summoned and has been perused. The order dated 20.11.2015 passed by the District Forum is reproduced as under:-

"Dated: 20/11/2015

**ORDER**

*As per office report, notice sent to OP through registered post on 21.10.2015, has not been received back served/unserved till date. Since 30 days have elapsed, therefore, OP is presumed (Sub Clause (2) of Regulation 10 of "The Consumer Protection Regulations, 2005") to have been served. Called several times since morning, but none has appeared on behalf of OP. Hence, OP is proceeded as exparte.*

*As requested, for filing of further evidence, if any by the complainant and arguments, listed for 27.11.2015."*

8. From the above order, it is clear that a notice was sent to the petitioner/OP by registered post on 21.10.2015, but the said notice had not been received back till 20.11.2015 and a time of 30 days since sending the notice had already elapsed. The District Forum relied upon regulation 10(2) of the Consumer Protection Regulations, 2005 and presumed service of notice upon the OP Airlines. In this regard, mention may be made of proviso to Section 28A(3) of Consumer Protection Act, 1986, which reads as follows:-

*"Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice."*

9. From the above provision, it is clear that the District Forum rightly presumed that proper service had been affected upon the OP Airlines, because the notice sent to them by registered post had not been returned within a period of 30 days. The District Forum, therefore, rightly proceeded ex-parte against



the OP Airlines. The order passed by the District Forum, therefore, cannot be faulted on this ground at all.

10. The main issue involved in the case relates to the cancellation of the flight SG 256 of the petitioner Airlines from Kolkata to New Delhi on 30.06.2015. A perusal of the grounds of the Revision Petition indicates that the petitioner/OP has taken the plea that the passengers travelling in the airlines are governed by the terms of carriage, contained in the e-ticket, framed in accordance with Carriage by Air Act, 1972. One of the clauses of the aforesaid terms of Carriage says that if the flight was cancelled or delayed, the airlines will assist the passengers to get to the destination, but shall not be liable in any way for the delay or cancellation. Further, the airlines reserve the right to cancel or delay any flight without incurring any liability in damages or otherwise to the passengers or any other person on any ground whatsoever. The learned counsel for the petitioner stated that the e-ticket issued to the passenger was a concluded contract between the parties and hence, they were bound to follow the terms and conditions of the said contract. The flight in question was cancelled due to operational and technical reasons, which were beyond the control of the petitioner and hence, the complaint against them was not maintainable.

11. The contention raised by the petitioner, as stated in the paragraph above, is not tenable, because the basic issue that merits consideration in the present case is, whether there has been deficiency in service on the part of the OP Airlines or not, in terms of the provisions of the Consumer Protection Act, 1986. It shall be worthwhile to quote the definition of 'service' and 'deficiency' as stated in Section 2(o) and 2(g) respectively in the Act in this regard, which reads as follows:-

*"Section 2(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, 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) "deficiency" means any 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"*

12. From the facts and circumstances of the case, it is abundantly clear that the flight, which the complainants were supposed to board, got cancelled, although all other flights from Kolkata airport were operational. The OP Airlines have not explained anywhere whether there were any genuine reasons for the cancellation of the flight. Merely taking the plea that there were technical and operational defects, does not cut much ice in view of the fact that the other flights were operating normally and hence, the general conditions at the airport or the weather conditions etc. were conducive to the operation of the flights. The OP Airlines have also not explained anywhere whether they took any concrete steps to take care of the passengers of their cancelled flight and to make arrangements for their travel by some alternative method. The deficiency in service on the part of the OP Airlines is, therefore, writ large on the face of it, and they are liable to compensate the complainant on this score. Referring to the contention of the OP Airlines about the concluded contract etc. between the parties, reference may be made to an order passed by the Hon'ble Supreme Court in **LIC of India vs. The Consumer Education**



and Research Centre (1995) 5 SCC 482, where it has been laid down as follows:-

*"47. 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 for ever. 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."*

13. It is made clear from the view taken in the case cited above that if a contract is found unreasonable or unfair or irrational, the same cannot be given affect to, in view of the fact that there is clear deficiency in service on the part of the OP Airlines, as they did not take any steps to provide an alternative to the passengers.

14. In so far as the issue of territorial jurisdiction is concerned, the State Commission have aptly brought out in the impugned order that part of the cause of action arose at Chandigarh, because with booking of the travel tickets on the internet, the acceptance of the contract was received by the complainant through internet at his place of business/residence. We have no reasons to differ with the view taken by the State Commission that the State Commission at Chandigarh had the territorial jurisdiction to handle the complaint.

15. The State Commission have rightly observed that the complainant was lucky to have her relatives at Kolkata, from whom, money was borrowed and an amount of Rs. 80,885/- was paid to another airlines to reach New Delhi via Bombay, from where they travelled by bus to reach Chandigarh. The harassment caused to the entire family of the complainant due to the cancellation of the flight is quite evident from the facts and circumstances on record.

16. From the foregoing discussion, there is no valid ground to disagree with the concurrent findings reached by both the consumer fora below. It is settled legal proposition that interference in such concurrent findings in the discharge of the revisional jurisdiction should be made only, if there is a patent error or miscarriage of justice as a result of these orders. Such a view has been taken by the Hon'ble Apex Court in **Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd.**, (2011) 11 SCC 269. It is held, therefore, that there is no illegality, infirmity or jurisdictional error in the orders passed by the fora below and the same are ordered to be confirmed. The present Revision Petition is held to be without any merit and the same is ordered to be dismissed. There shall be no order as to costs.

.....  
DR. B.C. GUPTA  
PRESIDING MEMBER

.....  
DR. S.M. KANTIKAR  
MEMBER



ITEM NO.15

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Diary No(s). 15120/2017

(Arising out of impugned final judgment and order dated 07-02-2017 in RP No. 1396/2016 passed by the National Consumers Disputes Reddressal Commission, New Delhi)

SPICEJET LIMITED

Petitioner(s)

VERSUS

RANJU AERY

Respondent(s)

( IA No.62906/2017-CONDONATION OF DELAY IN FILING and IA No.62914/2017-CONDONATION OF DELAY IN REFILING)

Date : 04-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Maibam N. Singh, Adv.  
Mr. Pramod Dayal, AOR  
Mr. Sidhartha Vikram, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the petitioner.

Delay condoned.

We do not find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)  
COURT MASTER (SH)

(PARVEEN KUMARI PASRICHA)  
COURT MASTER