

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 468 OF 2022

(Against the Order dated 08/02/2021 in Complaint No. 224/2015 of the State Commission
West Bengal)

1. YATRI HOTEL & ANR.

PRADHAN P.O. & P.S. - PRADHAN NAGAR,
DARJEELING - 734003

2. MANI KUMAR CHETTRI,

DIRECTOR OF YATRI HOTEL, S/O SHIV KR. CHETTRI,
SALBARI, METHIBARI, SALBARI, NEAR SIT COLLEGE,
P.O - SUKNA, P.S. PRADHAN NAGAR,
DARJEELING - 734009

.....Appellant(s)

Versus

1. ARJUN KAMI

S/O OF LATE KANCHHA KAMI, LANKAPARA T.G.
(FACTORY LANE), P.O. LANKAPARA HAT, P.S. -
BIRPARA,

ALIPURDUAR,
WEST BENGAL

.....Respondent(s)

FIRST APPEAL NO. 469 OF 2022

(Against the Order dated 08/02/2021 in Complaint No. 225/2015 of the State Commission
West Bengal)

1. YATRI HOTEL & ANR.

THROUGH ITS DIRECTOR, PRADHAN P.O. & P.S. -
PRADHAN NAGAR,
DARJEELING - 734003

2. MANI KUMAR CHETTRI,

DIRECTOR OF YATRI HOTEL, S/O SHIV KR. CHETTRI,
SALBARI, METHIBARI, SALBARI NEAR SIT COLLEGE,
P.O. - SUKNA, P.S. PRADHAN MAGAR,
DARJEELING - 734009.

.....Appellant(s)

Versus

1. DAUD EKKA

S/O LATE BARA JOSEF, BIRPARA NEW LINE. P.O. -
BIRPARA

ALIPURDUAR - 7352014,
WEST BENGAL

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :

MR. ABHAY KUMAR, ADVOCATE WITH
MS. SHAGUN RUHIL, ADVOCATE

MS. KUSUM PANDEY, ADVOCATE

FOR THE RESPONDENT :

MR. VIKAS NAUTIYAL, ADVOCATE FOR

MR. ALOK MUKHOPADHYAY, ADVOCATE

Dated : 19 November 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The above-said two appeals have been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 08.02.2021 of the State Commission in complaints no. 224 of 2015 and 225 of 2015, whereby the complaints were allowed.
2. We have heard the learned counsel for the appellants (hereinafter referred to as the 'Yatri hotel') and the learned counsel for the respondents (hereinafter referred to as the 'complainants') and have perused the record including *inter alia* the Order dated 08.02.2021 of the State Commission and the memoranda of appeals.
3. Since facts and issues involved in these appeals are identical, both these appeals are being disposed of by this common order, taking first appeal no. 468 of 2022, as the lead case.

F.A. No. 468 of 2022 (Lead-case)

4. The brief facts leading to the present appeal are that on 30.12.2014, the complainant's son Mr. Devraj Kami, who was an Assistant Teacher of Hossainabad T. G. Primary School (government employee), went to Siliguri and stayed at Yatri Hotel. He checked in the Yatri hotel on 30.12.2014. It is alleged that on the fateful night (i.e. 30/31.12.2014), there was an incidence of electric malfunctioning at the first floor of the hotel and the matter was reported to the authority but they did not pay any attention to the same. It is further alleged that at about 1.00 a.m. a fire broke out at the Yatri hotel, causing unfortunate death of complainant's son.
5. Alleging deficiency in service on the part of the Yatri hotel, which resulted in the ultimate death of the complainant's son, the complainant filed a complaint before the State Commission.
6. The Yatri hotel filed the written version stating that the incident is totally accident and as the same occurred in the late night the boarders collectively tried to come out and some incident had occurred. It is further stated that the hotel authorities obtained certificates from the different departments of the government and statutory bodies after proper inspection and there is no deficiency in service on the part of the appellant.
7. The State Commission, vide its Order dated 08.02.2021, allowed the complaint and directed the appellant – Yatri Hotel to pay a sum of Rs.33,08,064/- + Rs. 5,000/- + Rs. 5,000/- or Rs. 33,18,064/- along with Rs. 10,000/- as litigation cost.
8. The main issue for our consideration is as to whether there was any deficiency in service on the part of the Yatri Hotel resulting in death.

9. Before us, the learned counsel for the Yatri hotel argued firstly that the State Commission simply relied on the allegations made in the chargesheet to come to the conclusion that the Yatri hotel was negligent, which cannot be the sole basis for holding negligence since the chargesheet is a mere opinion of the investigating officer in a criminal case, and it has no conclusive proof. In support of this contention, he relied on the decision of the Supreme Court in **Rajesh Yadav & Anr. vs State of UP** (2022) 12 SCC 200 for this proposition. He further pointed out that the Yatri hotel had all the requisite licenses and certificates from the relevant authorities and more than 40 other occupants survived. The complainant's son and his friend were found at the bottom of a staircase, and it is not known why they left the room. It is further argued that the complainant's son and his friend's stomachs' contents showed alcohol consumption, therefore, the matter requires a deeper appreciation of complex facts, which cannot be adjudicated in summary proceedings under the Consumer Protection Act, 1986.

10. On the other side, learned counsel for the complainant submitted that the chargesheet makes out the negligence of the hotel, by clearly observing that there was no sufficient fire-fighting equipment, despite having a license. He pointed to the reports of FSL Kolkatta and the fire department made during the investigation to bring out that although fire-fighting equipment had been installed but it was not functioning. He argued that these facts clearly bring out the negligence on the part of the hotel and the State Commission has passed a well-reasoned order.

11. In the instant case, it is undisputed that on 30.12.2014 at 22.30 hours there was some electric disturbance at the Yatri hotel and the matter was brought to the knowledge of the management, however, no action was taken. It is not in dispute that at about 1.15 a.m., a fire broke out in the Yatri hotel premises, engulfing the hotel, which led to the death of the complainant's son and his friend in the said incident. The post mortem report clearly brings out that the deceased suffered major burns throughout and inside the body which led to death. The main ground on which the impugned Order dated 08.02.2021 is assailed is that the State Commission relied on the chargesheet to come to the conclusion that the Yatri hotel was negligent while it is a settled fact that the chargesheet is not conclusive proof of guilt. However, the undisputed facts that emanate from the document, can be used to arrive at conclusions in matters that do not require strict evidence as in criminal law. In the instant case, a perusal of the charge sheet clearly shows that it mentions the reports of the incident from authorities other than the police.

“During investigations of the case, it is found that on 31.12.14 at 22:30 hrs there was some electric disturbance at hotel Yatri. The matter was informed to hotel management but no action was taken that time. Later on at around 01:15 hrs (01.01.15) fire broke out & engulfed the hotel and ultimately resulted deaths of two individuals. Owner of the hotel were control of the entire system so they had liability to ensure that the entire system is working properly. Mere installation of fire safety system and obtaining fire safety certificate does not discharge the person in control of the system from the liability to make sure that the entire systems are working properly. It is clear that all the owners of the hotel have the liability to prevent such devastating fire which resulted death of two persons.

During investigation of the case, expert team of FSL Kolkata visited and inspected the spot W.B.S.E.D.C.L. official also visited the spot. W.B. Fire & Emergency Services also inspected the spot also. Later on, reports have been collected from these authorities. It is to note that Sinwas Toppo, OIC Siliguri Fire Station, W.B. Fire & Emergency Services Siliguri initially reported that inbuilt system for fire lighting had been installed but not functioning. Despite of obtaining NOC from fire services department the hotel authority ought to maintain the system properly.”

Further, the Inspector incharge of Pradhan Nagar Police Station vide his office memo No. SFA/H 608, dated 31.12.14 also reported 'No sufficient installation of fire extinguisher'

12. The learned counsel for the Yatri Hotel has tried to explain that at about 10.30 p.m. a problem occurred, if it happened, it was on the first floor and all the guests were staying above that floor. Further, he has relied on the certificate issued for fire safety on 13.01.2014 and by some other agency that certified that its fire-fighting equipment was up-to-date and functioning on 05.03.2014.

13. It is manifest that the electric problem, that occurred at 10.30 p.m., went unattended on the part of the hotel. It is also evident that by 31.12.2014 as reported by FSL and WB Fire services authorities, the fire fighting equipment was not functioning. Further, it is reported that there were not enough fire extinguishers on the premises. May be at the beginning of the year the equipment was functioning, however at the end of the year it was not. The Yatri hotel has not brought on record any details regarding the number of fire extinguishers installed on the premises nor any evidence of efforts made through safety equipment to bring the fire under control on that fateful night. Where the bodies were found or if they had consumed alcohol or not, is irrelevant in view of the clear finding in the post-mortem of the acute burn injuries on the body. The survival of other guests in no way absolves the Yatri hotel from the negligence on its part. That apart, the facts that emanate from the chargesheet, are a clear indication of deficiency in service and negligence on the part of the Yatri hotel. They cannot be ignored. Keeping the hotel safe in every manner required by law for the guests is the responsibility of the hotel. It cannot shirk its liability by relying on certificates issued months earlier from the date of incident.

14. In view of the above, we are of the view that there was clear deficiency of service and negligence on the part of the hotel and the State Commission has passed a well-reasoned order.

15. The appeal, being without merit, is dismissed. All pending I.A.s, shall stand disposed off.

First Appeal No. 469 of 2022

16. The first appeal no. 469 of 2022 is dismissed in terms of the examination and reasons contained hereinabove apropos appeal no. 468 of 2022 (the lead-case).

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER