

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1425 OF 2015

(Against the Order dated 04/02/2015 in Appeal No. 109/2013 of the State Commission West Bengal)

1. ASHIS KUMAR PAUL

SON OF SHRI RAVI DAS PAUL. PREVIOUSLY RESIDING
AT HOUSE NO. 53, 1ST FLOOR, 1ST AVENUE, SEPCO
TOWNSHIP DURGAPUR
BURDWAN

W.B

.....Petitioner(s)

Versus

1. GENERAL MANAGER, EASTERN RAILWAY & 2 ORS.
EASTERN RAILWAY , HEAD OFFICE-17, NETAJI
SUBHASH ROAD,
KOLKATA- 700001

W.B

2. THE DIVISIONAL RAILWAY MANAGER,
EASTERN RAILWAY, HEAD OFFICE-17, NETAJI SUBHAS
ROAD,.
KOLKATA - 700001

W.B

3. STATION MANAGER,
DURGAPUR EASTERN RAILWAY,DURGAPUR,
BURDWAN - 713216

W.B

4. MRS.MOUSUMI DUTTA,
PREVIOUS REISDENT OF HOUSE NO-53,1ST FLOOR, 1st
AVENUE,SEPCO, TOWNSHIP, DURGAPUR
DISTRICT- BURDWAN,
W.B-713205

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER : IN PERSON WITH
MD. BAHA R., ADVOCATE

FOR THE RESPONDENT : MR. SANJEEV KUMAR VERMA, ADVOCATE

Dated : 30 April 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner(s) against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 04.02.2015 of the State Consumer Disputes Redressal Commission, West Bengal (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 109/2013 in which order dated 09.01.2013, District Consumer Disputes Redressal Forum,

Muchipara, Burdwan (hereinafter referred to as District Forum) in Consumer Complaint (CC) no 80/2012 was challenged, inter alia praying to set aside the order passed by the State Commission.

2. While the Revision Petitioners (hereinafter also referred to as complainants) were respondents before the State Commission and Complainants before the District Forum. The Respondents (hereinafter also referred to as OPs) were Appellants before the State Commission and OPs before the District Forum.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 29.01.2024, 30.11.2023 (Petitioner) and 30.11.2023 (Respondent) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The complainant was allegedly subjected to physical assault by the railway personnel despite possessing a valid railway ticket while traveling to New Delhi on 24.02.2012. He claims that he was forcibly removed from the train by Railway Protection Force (RPF) personnel, tied to a tree with a rope at Mughalsarai Station, detained overnight in a lock-up, and released on bail the following day. Consequently, he seeks a refund of Rs. 3,400/-, the cost of the railway ticket, along with interest and other appropriate relief. In contrast, the railway authorities assert that under the Tatkal Scheme, passengers must produce the original proof of identity indicated on the ticket during the journey. Failure to do so results in all passengers listed on the ticket being treated as traveling without a ticket and charged accordingly. Since the passenger named Mrs. M. Duta (Complainant's wife), whose identity proof was mentioned on the ticket, did not travel, the Ticket Examiner (TTE) asked the complainant to explain the unauthorized pulling of the alarm chain near Rafigunj Station. When the complainant failed to provide a valid reason, he was handed over to the Railway Protection Force (RPF) personnel and subsequently prosecuted according to the law. Subsequently, the complainant filed a complaint in District Forum.

5. Vide Order dated 09.01.2013, in the CC no. 80/2012 the District Forum has allowed the complaint and directed OPs to refund the amount of Rs. 3,400/- along with interest @9% p.a. from date of purchase of ticket till realization; directed OPs to pay Rs. 15,00,000/- to the complainants as compensation out of which Rs. 5,00,000/- will be deposited to the Consumer Welfare Fund.

6. Aggrieved by the said Order dated 09.01.2013 of District Forum, OPs/Respondents appealed in State Commission and the State Commission vide order dated 04.02.2015 in FA No.109/2013 has dismissed the complaint.
7. Petitioners have challenged the said Order dated 04.02.2015 of the State Commission mainly on following grounds:
 - i. The State Commission erred in concluding that the District Forum erred in its decision by relying on circular no. 61/2011. Furthermore, the State Commission failed to recognize fault with the Ticket Checking Staff (TTE). In the present case, the ticket checking staff of the Sealdah Rajdhani Express, train no. 12313 dated 24.02.2012, exhibited arrogance and posed a significant safety risk to society. Their actions should be condemned by the Railway Authority, as they failed to comprehend the significance of the Tatkal amendment scheme outlined in circular no. 61/2011.
 - ii. The State Commission's failure to recognize the arrogance displayed by the Ticket Checking Staff (TTEs) and their negligence in performing their duties is concerning. It is imperative to impose stringent punishment on the TTEs, including the withholding of their increments and their suspension for an extended period. Moreover, they should be relieved of duties related to ticket checking, especially on prestigious trains like the Rajdhani Express, Duranta Express, Satabdi Express, and others. Instead, they should be assigned purely clerical tasks without public interaction. The State Commission overlooked the potential harassment faced by genuine passengers due to the enforcement of Circular No. 59/2011 dated 11.11.2011. The subsequent Circular No. 61/2011, issued just seven days after the previous one, aimed to address this issue and mitigate the risk of harassment faced by passengers due to dishonest TTEs. It is essential for the Railway Authority to maintain its reputation by addressing these issues promptly and effectively.
 - iii. The State Commission overlooked the inherent contradictions within Circular No. 59/2011 issued by the OPs. It failed to acknowledge that this circular contained self-contradictory provisions, particularly in paragraphs (iv)(e) and (iv)(f), which used ambiguous language such as "may," "possibility," and "feasibility." These provisions conflicted with each other, as indicated in para (iv)(f), which addressed the automatic partial cancellation in cases of non-traveling of one passenger under the Tatkal scheme. This inconsistency within the same circular led to confusion and demonstrated the flawed nature of the circular itself. Such inconsistencies were exploited to benefit the Ticket Checking Staff (TTEs) financially. If this flawed circular were to remain in force, it would lead to the harassment of numerous genuine passengers and facilitate the misappropriation of public funds. Consequently, the correction introduced through

Circular No. 61/2011 within a week was necessary to rectify these issues and safeguard the interests of passengers.

iv. The State Commission failed to acknowledge that the amendment to the previous circular was implemented in the interest of genuine passengers. The amendment clearly emphasized the need for ticket checking staff to be familiar with the revised features of the Tatkal Scheme to prevent inconvenience to the general public. However, the State Commission overlooked the fact that the ticket checking staff, lacking awareness of the amendment, caused unnecessary inconvenience to genuine passengers. This resulted in the complainant being unable to undertake their journey on 24.02.2012 and being subjected to harassment by the TTEs. Moreover, the complainant was reportedly subjected to physical assault with the assistance of the Railway Protection Force (RPF) Authority and forcibly removed from the train. Subsequently, a case was lodged against the complainant under section 141 of the Railway Act. Such inhumane treatment by railway employees, without proper understanding of the amendments introduced through Circular No. 61/2011, reflects a gross violation of passenger rights and warrants condemnation. Top of Form

v. The State Commission failed to acknowledge that in a modern society, no authority should wield arbitrary power. The ticket checking staff of the Sealdah Rajdhani Express, Train No. 12313, on 24.02.2012, acted in an arrogant and unsafe manner, endangering society. The X-ray report of the complainant's left palm and the injury to his left middle finger indicate that he raised his hand in self-defense and sustained injuries due to the ticket checking staff's inhumane behavior. The State Commission failed to recognize these crucial points, leading to an unjust judgment on 04.02.2015, in FA/109/2013.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

i. The counsel for Petitioners/complainants argued that the complainant was charged with traveling without a ticket, according to clause (iv)d and (iv)e of Commercial Circular No. 59 of 2011 dated 11.11.2011. However, Commercial Circular No. 61 of 2011, issued on 18.11.2011, modified and continued the preceding circular. Clause 2.1 of the latter circular emphasized the need for ticket checking staff to be familiar with the revised features of the Tatkal scheme to avoid inconvenience to the general public. The complainant was manhandled by the departmental authorities on board, some of whom were under the influence of alcohol. He was falsely charged with pulling the emergency chain and implicated under section 141 of the Railways Act. The complainant severe

humiliation and was deboarded midway without any medical test being conducted on the concerned TTE regarding the allegation of being under the influence of alcohol.

- ii. There is no evidence provided by the railways to demonstrate that the complainant was traveling without a ticket and charged accordingly as per the commercial circulars. The burden of proof lies upon the party making the allegation, and in this case, no witnesses have been presented by the railway authorities to support their claim. To ascertain whether the complainant or a co-passenger pulled the emergency chain, no witnesses have been presented by the railway authorities to support their claim against the complainant. The counsel further asserts that there is no charge against the complainant for traveling without a ticket. Instead, the complainant is being proceeded against under section 141 of the Railways Act, which requires adjudication by the appropriate court of law. As the complainant is not a traveler without a ticket, he is considered a consumer, and there was a severe deficiency of service provided to him. The State Commission's failure to properly assess the case led to the overturning of the order of the District Forum without adequately addressing its contents.
- iii. The counsel for Respondents/OPs argued that there is no deficiency on the part of the OPs. The complainant booked two tickets on the Tatkal Scheme for himself and his wife but provided only his wife's identity details. As per railway rules, at least one passenger traveling on the ticket must show the original identity to the Ticket Examiner (TTE). Failure to do so results in all passengers being treated as traveling without a valid ticket. When the TTE checked the ticket, the complainant produced an invalid identity, leading to a penalty being charged. The complainant refused to pay the penalty, argued with the TTE, and pulled the emergency chain, resulting in the intervention of the Train Manager and subsequent involvement of the Railway Protection Force (RPF).
- iv. The State Commission rightly set aside the order of the District Forum, as it erroneously relied on Circular No. 61/2011, which is irrelevant to the present dispute. The relevant circular, Commercial Circular No. 59/2011, stipulates that passengers traveling on a ticket booked under the identity of a person who does not travel are considered without a ticket and are charged accordingly.

9. We have carefully gone through the order of the State Commission, other relevant records and rival contentions of the parties, in particular we have gone through both the Circular Nos. 59 of 2011 and 61 of 2011 issued on 11.11.2011 and 18.11.2011 respectively. It is the case of the OP Railways that Circular No. 61 of 2011 is not relevant to the present dispute and District Forum erroneously relied upon it and State Commission rightly set aside the order of the District Forum. OP Railways argued that at-least one passenger travelling on the ticket has to show original identity to the TTE, failure to do so result in all passengers being treated as travelling without a valid ticket. It is to be noted that as per Circular No. 59 of 2011 for Tatkal tickets, which can be booked by maximum of 4 persons, it is not

mandatory to give identity proof of each and every passenger. It is sufficient if identity proof of only one passenger is indicated at the time of booking the ticket and at the time of travel, that particular identity proof has to be shown to the TTE. Of-course it is open to the passenger(s) booking the ticket to indicate identity proof of all the passengers if they so desire. In fact, the Complainant has pleaded that he himself went for the booking of the ticket and requested the booking counter official of OP to mention both IDs in the ticket but the booking clerk under rush hour informed him that it is not necessary to do so as ticket shows names, sex and age of both the passengers. Although there is no evidence of conversation between the Complainant and booking clerk, we have no reason to disbelieve this contention of the Complainant. It is further contended that the ticket contains no mention that if ID card holder passenger does not travel, remaining passengers mentioned in the ticket cannot make the journey and will be treated ticketless. Para iv (e) of Circular No. 59 of 2011 states that if the passenger whose identity card number is indicated on the ticket is not travelling, all other passengers booked on that ticket, if found travelling in train, will be treated as travelling without ticket and charged accordingly. This in our considered view is a very harsh condition in the circular as situation may arise where some of the passenger(s) after booking a train ticket are not able to travel due to last minute change of programme or some other valid reason but the remaining passengers have to travel. This circular does not mandate that all passengers must indicate their identity proof compulsorily at the time of booking, and partial cancellation of ticket for some passenger (s) is permissible under the scheme. Denying the remaining passenger(s), who hold validly booked paid ticket, right to travel or to treat him as ticketless and charge him / them again appears to be unfair. At the most, TTE should insist that person who is travelling, in such a situation where his identity proof is not mentioned in the ticket and other passengers whose identity proof is mentioned is not travelling, should atleast produce his own identity to the satisfaction of the TTE. If that is done, in our considered opinion, such passenger should not be treated ticketless traveler and charged again. Moreover, such a condition of Circular of the OP Railways need to be mentioned on the ticket, as passengers are not expected to have access to various circulars issued by the Railway.

10. A perusal of circular No. 61 of 2011 shows that under clause vii, in case of partial cancellation, if the passenger, whose identity card number has been indicated, is cancelled in a PNR, the number of the proof of identity of atleast one of the remaining passengers needs to be provided mandatorily. However, this clause of the circular is silent as to in such a situation, in what manner and to whom identity number of the remaining passenger is to be provided mandatorily. The obvious intention of Circular No. 61 of 2011, which was issued just a week after a circular No. 59 of 2011, appears to be to take care of the difficulties being faced by the passengers in such a situation, where the ticket of the passenger whose identity has been indicated gets cancelled and remaining passenger who intends to travel, his identity is not indicated in the originally booked ticket. Hence, in our considered view, District Forum rightly relied upon Circular No. 61 of 2011, notwithstanding some ambiguity in clause vii of this circular as to the stage and manner of providing the number of identity of the remaining passenger in the situation of ticket of the passenger whose identity number has been indicated, getting cancelled. On this count, District Forum has given a well reasoned order and in our opinion, State Commission went wrong in reversing these findings of the

District Forum. Further, the District Forum, keeping in view the facts and circumstances of the case including the medical report of the hospital, accepted the version of the complainant with respect to the manhandling by the TTE / Railway staff. Although there is not sufficient evidence on record to prove such an incident of manhandling and harassment of the complainant, as alleged, circumstances do indicate that such situation might have possibly arisen on account of arguments between the TTE and the Complainant on account of TTE classifying the complainant as ticketless traveler and asking for being charged again in accordance with Circular No. 59 of 2011.

11. In view of the foregoing, we are of the considered view that due to some ambiguity in para vii of Circular No. 69 of 2011 about the stage and manner of providing the number of proof of identity of remaining passengers in case of partial cancellation, it may be unfair to treat the complainant in the present situation as a ticketless traveler. In such a situation, benefit of doubt must go in favour of the Complainant / passenger. It was held by Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Harsolia Motors**, (2023) 8 SCC 362 observed as under :

“24. The provisions of the 1986 Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit-oriented legislation. The primary duty of the Court/Commission while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.”

12. Keeping in view the entirety of the facts and circumstances of the case and in the absence of sufficient evidence of willful acts of manhandling on the part of the TTE / other Railway Staff, we are of the considered view that quantum of compensation awarded by the District Forum is excessive, hence order of the District Forum would also require modification in this regard.

13. In view of the foregoing, order of the State Commission is set aside, order of the District Forum is upheld with modification with regard to quantum of compensation and certain other reliefs. We hereby order that OP-Railways (respondent herein) shall refund amount of the ticket alongwith compensation of Rs.25,000/- on account of deficiency in service as well as mental pain and agony suffered by the Complainant. The above amount shall be payable to the complainant with interest @ 9% p.a. from the date of the order of the District Forum. All amounts payable as per this order shall be paid within 30 days from today, failing which amount payable at the end of 30 days will carry interest @ 12% p.a. till the date of actual payment. Order of the District Forum stands modified accordingly and all other reliefs granted by the District Forum are set aside.

14. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER