

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD

PRESENT

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
HON'BLE MR.R.NARAYAN REDDY, MEMBER

Friday, the 14th day of July, 2023

Consumer Case No.564 OF 2022

Between:-

DS Chowdary W/o. Late N.N.R.K.Mohan Rao,
Aged about: 40 Years, Occ: Private Employee,
R/o. Flat No. 307, Plot No.200,
Manikonda Towers, Pragati Nagar,
Lake View Colony Road, Hyderabad – 500 090.Complainant

AND

1. M/s.Concu Cakes
Plot No.738, Road No.37,
CBI Colony, Jubilee Hills,
Hyderabad – 500 033,
Rep. by its Proprietor.
2. M/s.Concu Cakes
Concu, 8-2-283/4, Road No.14,
Banjara Hills, Hyderabad – 500 034,
Rep. by its Manager.Opposite Parties

Counsel for the Complainant : Party-in-Person
Counsel for the Opposite Parties : E. Sudhanshu Rao

O R D E R

(By Hon'ble Mr. R. Narayan Reddy, Member
on Behalf of the Bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 against the Opposite Parties, alleging deficiency of service on the part of the Opposite Parties with a prayer:
 - a) To pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) towards stress, mental agony, damages and deficiency in service;
 - b) To pay costs of Rs.50,000/- (Rupees Fifty Thousand Only);
 - c) and pass such other order or orders which the Hon'ble Commission deems fit and proper under the circumstances of the case.

2. The averments of the Complaint in brief are that, on 10.08.2022, the Complainant ordered eggless cake on Concu website and paid an amount of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) through online. The cake was supposed to be collect on 16.08.2022 at 12:00 pm. On the same day, the Complainant collected the cake from the Opposite Party No.2. In the evening of 16.08.2022, the Complainant and her relatives cut the cake on the occasion of her cousin's birthday. After cutting the cake, her cousin gave cake to the Complainant, after consuming a portion of it, she realized the cake was not an eggless cake. That was completely an egg cake and was smelling differently. The Complainant submitted that on 17.08.2022, the Complainant called the customer care support and raised complaint. After sometime a lady introducing herself as owner of the Opposite Parties apologized and admitted that there was a mistake from their side and they delivered the complainant wrong cake with egg instead of eggless cake which she specifically ordered. And she offered the Complainant to refund the cake amount and complementary lunch as a token of apology. For which she agreed for refund and also asked them not to send any food. The Complainant further respectfully submit that the Complainant don't eat egg or non-veg and she strictly keep fasting on Tuesday for recovery of his husband who was hospitalized for the last 14 months in an accident. The Complainant stated that the action of the Opposite Parties in providing egg cake instead of eggless cake has not only spoiled the religious practice but also put the Complainant in permanent mental agony. She always orders only eggless cakes in the past. The negligence of the Opposite Parties not only amounts to deficiency in service but also amounts to unfair trade practice. The Complainant further stated that she herself and her family members subjected to serious inconvenience, hardship and severe mental harassment apart from irreparable financial loss. Hence, having no alternative, the Complainant filed the present Complaint with the reliefs as stated supra.
3. Upon receipt of the notice in the said complaint, the Opposite Parties filed their written version, denying all the material allegations except those which are specifically admitted, it is contended that the Complainant ordered a cake with Concu located at Banjara Hills, Hyderabad, via the website

(www.concu.in) on 10.08.2022. Thereafter on 17.08.2022, the Complainant filed a grievance on the above mentioned website complaining that the Cake delivered had “the message was missing...was too sweet (and) the message was written using a pen”. Subsequently, on the same day, over a telephonic conversation, the Complainant mentioned for the first time, that the cake was not eggless and reiterated her grievance over the taste of the cake. It is contended that in the Complaint raised by both the means, it can be observed that the Complainant does not raise the claim of her fasting derived from her alleged religious beliefs for the wellbeing of her late husband. The team of the Opposite Party actively reached out to the Complainant to resolve the grievance wherein, and promptly suggested an entire refund and a complementary hamper/lunch in addition to an in store credit. The Complainant accepted the refund initiated by the Opposite Party on 22.08.2022 which was processed on 23.08.2022 wherein the Opposite Party refunded the complete purchase value of the product purchased by the Complainant. Despite accepting the remedy of the entire refund provided in good faith and in consideration of the Complainant’s wellness, the Complainant filed the present complaint on malicious grounds seeking additional compensation by falsely aggravating the true facts of the present case. Further it was contended that the video extract from Concu, clearly observed from the video evidence, that the Complainant at 11:39:10 hours visually appraises the cake and smells the cake in close proximity and approves the same when shown to her by the Concu employee for final packaging. A few minutes later at 11:41:54 hours, the employee can be observed to write the requested wishes on the card. It can be clearly observed that the Complainant was in plain sight of the message being written and approved of the same when shown to her by the employee at 11:42:17 hours. The Complainant who was in store till 11:43:01 did not object even once regarding the cake’s appearance or the smell of the egg as alleged by the Complainant in her second complaint. Subsequently, the Complainant out of her own volition placed an additional order of 6 individual desserts (cakes) from Concu’s display section (Classic Opera (2) and Red Velvet (4)) wherein, the Complainant had absolute and complete knowledge about the contents of the desserts that they contained egg in them.

These desserts (cakes) were approved by the Complainant at 11:17:22 hours and thereafter the Complainant proceeded to pay for the same. It was well within the knowledge of the Complainant that the dessert (cakes) purchased by her contained egg in them. The aforesaid is in apparent contradiction to SMS conversations with the Complainant wherein she stated that “we don’t eat meat or egg of any other living being as per our community”. Furthermore, the Complainant at no stage claims that the consumption of the egg had distorted her religious belief as mentioned by her. She merely assumes that she believes that the Consumption of egg cake is a plausible reason for her husband’s death on 21.08.2022. The Complainant was requested to send back the cake to the store which was not received by the store to confirm the claims raised by the Complainant. Despite there being a plausible apprehension of the cake being eggless or egg, the Customer care at Concu, Banjara Hills in good faith and intention had promptly resolved the grievance of the Complainant. It is further submitted that the death of the Complainant’s husband has no relation whatsoever with the Opposite Parties product (cake) and the same neither amounts to deficiency in service nor is an unfair trade practice as claimed by the Complainant. It is stated that the Opposite Party has not caused any mental trauma or mental agony to the Complainant and the fact that the Opposite Party refunded the entire value of the product only goes on to show the sheer amount of dedication of the Opposite Party to provide excellent service. It is further stated that the Complainant herself states that the entire complaint is based on her belief that her husband passed due to the sin committed by her and the same is no ground to seek compensation as per the definition of unfair trade practice or deficiency in service. Hence, sought for dismissal of the complaint with exemplary costs.

4. During the Course of enquiry, the Complainant filed her evidence affidavit and marked her documents as Ex.A1 to A5 in her favour and reported no further evidence whereas the Opposite Parties filed their evidence affidavit through their Partner Faraz Ahmed S/o. Dr. Ajaz Ahmed and marked Ex.B1 to Ex.B6 and reported no further evidence. Complainant did not file his written arguments whereas the Opposite Parties filed their written arguments and

both the parties advanced their oral submissions. Thereafter, the matter was reserved for orders.

5. Heard the Complainant and Counsel of Opposite Parties No.1 & 2. Based on the facts and material available on the record, the following points have emerged for consideration:

- a. Whether the Complainant/Party-in-Person could make out the case of commission of deficiency of service and adoption of unfair trade practice by the Opposite Parties?
- b. Whether the Complainant is entitled for the claim / compensation made in the complaint?
- c. If so, to what relief?

5.1. Point No.(a):

It is the admitted fact that the Complainant ordered eggless cake on the website of the Opposite Parties by paying Rs.2,500/- through online. As per the Ex.A-1, the cake was supposed to be collect on 16.08.2022 at 12:00 pm. As per the statement of the Opposite Parties and Ex.B-1 i.e. visuals of the CC camera footage, the Complainant on 16.08.2022 at 11:39:10 hours visually appraises the cake and approves the same when shown to her by the Concu employee for final packaging, but she did not smells the cake in close proximity as contended by the Opposite Parties though she was in store till 11:43:01. Here it is the allegation that in the evening of 16.08.2022, the Complainant and her relatives cut the cake on the occasion of her cousin's birthday, and after cutting the cake, her cousin gave cake to the Complainant, after consuming a portion of it, she realized the cake was not an eggless cake, that was completely an egg cake and was smelling differently.

5.1.1. The Complainant stated that she called the customer care support on 17.08.2022 and raised complaint. After sometime a lady introducing herself as owner of the Opposite Parties apologized and admitted that there was a mistake from their side and they delivered the complainant wrong cake with egg instead of eggless cake which she specifically ordered. Further stated that the Complainant don't eat egg or non-veg and she strictly keep fasting on Tuesday for recovery of her husband who was hospitalized for the last 14 months in an accident.

And the Opposite Parties offered the Complainant to refund the cake amount and a gift hamper, and Exs.A-2, A-5 and B-1 (audio) are evident to statement of the Complainant. and the Ex.A-2 is also evident that Opposite Parties were admitted their mistake and they assured that *“they have taken immediate action, we have printed green stickers to go our eggless cake boxes so no one in future ha to go through this”* and offered *“I could refund the amount you spent on the cake and send you a hamper, but I was told that won’t work I could offer you store credit for you to purchase something in the future...”*

5.1.2. The Complainant claimed that the action of the Opposite Parties in providing egg cake instead of eggless cake has not only spoiled her religious practice but also put the Complainant in permanent mental agony. She always orders only eggless cakes in the past Ex.A-3 is the evident to it. The negligence of the Opposite Parties not only amounts to deficiency in service but also amounts to unfair trade practice. The Complainant further stated that she herself and her family members subjected to serious inconvenience, hardship and severe mental harassment apart from irreparable financial loss.

5.1.3. Though the Opposite Parties were admitted their mistake, before filing present complaint, and now they denied the claim of the Complainant before this Commission by contending that before receiving the Cake, the Complainant smelled the same and after satisfying only the cake was delivered to her. And further pleaded that not only the subject cake, subsequently out of her own volition the Complainant placed an additional order of 6 individual desserts (cakes) from Concu’s display section (Classic Opera (2) and Red Velvet (4)) wherein, the Complainant had absolute and complete knowledge about the contents of the desserts that they contained egg in them. These desserts (cakes) were approved by the Complainant at 11:17:22 hours and thereafter the Complainant proceeded to pay for the same. It was well within the knowledge of the Complainant that the dessert (cakes) purchased by her contained egg in them. The aforesaid is in apparent contradiction to SMS conversations with the Complainant wherein she stated that *“we don’t eat meat or egg of any other living being as per our community”*.

To support their pleading the Opposite Parties relied on the Ex.B1 (CC footage) and Ex.B-3 Photographs of Dessert (cake) Display. But no exhibit shows that the dessert cakes are containing egg. And the Complainant also never claimed that the Dessert cakes having egg and she ate that. Her grievance is only that the cake which was booked by her through online that was eggless cake but the Opposite Parties delivered the cake made with egg. And this was also admitted by the Opposite Parties also through Ex.A-2 and Ex.B-1 (audio). The acts of the Opposite Parties is nothing but deficiency of service and due to which she suffered mentally as it was affected her spiritual and customary practice which cannot be compensated monetarily.

5.1.4. The Opposite Parties in their arguments taken an objection that the electronic evidence is not backed by Section 65B Certificate of the IE Act, but at the same time they also filed a pen drive which contains CC footages and audio under Ex.B-1 without the Certificate under Sec.65 of IE Act. And also contended that the Opposite Parties refunded the amount to the Complainant with complimentary hamper/lunch through Ex.B-6 and B-7, which was accepted by the Complainant. But the Opposite Parties filed and marked the documents from B-1 to B-6 only. There is no exhibit was marked under B-7, and Ex.B-6 is the receipt of dessert cakes of six pieces (classic opera 2 and Red Velvet 4) for which the Complainant herself paid the amount of Rs.1,019/-. Hence, in view of the above finding, point (a) is answered in favour of the Complainant.

5.2. Point No.(b):

In view of the foregoing discussions and findings, the Complainant is entitled to the reliefs as mentioned infra. Hence, point (b) is also answered in favour of the Complainant.

5.3. Point No.(c):

In the result, the Complaint is allowed in part and directed the Opposite Parties jointly and severally:

- a. To pay the reasonable compensation of Rs.40,000/- (Rupees Fourty Thousand Only) towards mental agony and sufferings caused to the Complainant;
- b. To pay costs of Rs.10,000/- (Rupees Ten Thousand Only).

Time for compliance is 45 days from the date of receipt of the Certified Copy of this Order, failing which the amount mentioned under serial no (a) i.e. Rs.40,000/- shall attract interest @ 6% p.a. till the actual realization.

Dictated to stenographer, transcribed and typed by him, pronounced by us on this the 14th day of July, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

DS Chowdary W/o. Late N.N.R.K.Mohan Rao Complainant / Party-in-Person (PW1).

WITNESS EXAMINED FOR THE OPPOSITE PARTIES:

Faraz Ahmed S/o. Dr.Ajaz Ahmed Rep. by the Partner of Opposite Parties (DW1).

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of Order status Tracking.
- Ex.A2 Copy of SMS Conversation between the Complainant and the Opposite Parties.
- Ex.A3 Copy of past orders.
- Ex.A4 Copy of death certificate of Complainant's husband dated: 21.08.2022.
- Ex.A5 Copy of WhatsApp conversation between the Complainant and the Opposite Parties.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTIES:

- Ex.B1 Copy of the video showing the Complainant receiving the cake.
- Ex.B2 Copy of the SMS Conversation between management of Concu, Banjarahills and the Complainant.
- Ex.B3 Copy of the Concu's display card indicating that the desserts contained egg.
- Ex.B4 Copy of SMS Conversation between management of Concu, Banjarahills and the Complainant
- Ex.B5 Copy of refund processed to the Complainant by the Management of Concu, Banjarahills
- Ex.B6 Copy of the bill for the egg desserts (cakes) purchased by the Complainant.

MEMBER

MEMBER

PRESIDENT

Read by:
Compared by:
DSK