

Date of Filing: 12.08.2021
Date of Order: 21.08.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD
P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

On this the Monday, the 21st day of August, 2023

C.C.No. 439/2021

Between

Lakkireddy Lokesh Reddy, S/o L. Viswanath Reddy,
Aged about 26 years, Occ: Advocate,
S1-B-123, Sachivalaya Nagar,
Vanasthaliuram, Hyderabad, T.S – 500070
Cell No. 7416131932

....Complainant

AND

1. The operations Manager,
Chicha's Asli Hyderabad,
6-2-39, AC Guards Rd,
Opp. Kun Hyundal,
Lakdikapul, Near Mahavir Hospital,
Hyderabad – T.S – 500004
2. The operations Manager,
Chicha's Express, Road No.2,
KBR National Park,
Banjara Hills, Hyderabad – T.S – 500034.

....Opposite Parties

Counsel for the Complainant : Party-In-Person
Counsel for the Opposite parties : A. Bhasker Rao

O R D E R

(By HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
on behalf of the bench)

1. The present complaint is filed by the complainant U/sec.35 of The Consumer Protection Act alleging deficiency of service/unfair trade practice on the part of the Opposite Parties and seeking appropriate direction to the Opposite Parties
 - i. To pay the excess amount of Rs.40/- collected in excess of MRP from me with an interest of 18% p.a. from 11.04.2021 to date of filing of this complaint i.e. Rs. 2.34% and further interest till its realization.

- i) To pay compensation of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) on account of causing incontinence, mental agony, physical hardship and for rude and arrogant behaviour of the servants of opposite party No.2 and for humiliating us in front of other customers and for forcing me to pay the extra money and for resorting to unfair trade practice by charging more than MRP and rendering deficient services.
- ii) To pay an amount of Rs. 10,000/- (Rupees Ten Thousand Only) towards costs of legal expenses.
- iii) To pay costs of the complaint and pass any such other relief or reliefs as the Hon'ble Commission deems fit and proper in the circumstances of the case and in the interest of justice.

Brief facts of the case are:-

2. As per the averments of the complaint, the complainant along with his friends went to the Opposite Party Hotel at around 9 pm on 11/04/2021 and purchased Garlic Chicken Kabab(K), two bottles of Mini PET COLA (250ml) and two mini water bottles (500 ml) and he was charged Rs.456/- only. It is the case of the complainant that the Opposite Party charged Rs.30/- for mini PET COLA (250ml) each whereas, the MRP on the bottle is Rs.20/- and charged Rs.20/- for each water bottle (500ml) when the MRP on bottle is Rs.10/- i.e in total he was charged extra amount of Rs.40/- (on two bottles of mini PET COLA (250 ml each) and two water bottles (500 ml each) (Bill No.249 filed under Ex A-1) , which is in violation of the provisions of the Legal Metrology act, 2009 and the Monopolistic & Restrictive Trade Practices Act, 1969. It is also submitted that in the menu of their official website <http://chichas.in> (screen shot of the same filed under Ex A-3), the mini water bottle (500ml) is priced @ Rs.20/- only and mini PET soft drink is priced @ Rs.25/- only. Which re higher than the MRP. It is also alleged by the complainant that the ambience of the restaurant is unsatisfactory and as it is a drive-in restaurant, they had to eat in their car in an open area which is completely katcha ground filled with sand, dust and pollution and the attitude of the restaurant staff was rude and arrogant. It I also alleged that the food cooked in a grill in open area is exposed to

dust and pollution which is health hazardous to the consumers. Apparently, the complainant got issued a legal notice dt.19/04/2021 (Ex A-4) and in pursuance of the same, the present complaint is filed seeking appropriate relief.

- 3.** In the written version filed on behalf of the Opposite Parties, while denying the allegations, it was contended that after having ordered food as per the menu and partaking the same, the complainant questioned the manager of the Opposite Party that they have charged more amount than the MRP on soft drink and the water bottle and that the Opposite Party answered that they were charged as per the menu card only (Ex B-1) and the extra charges are for the ambience. It is submitted by the Opposite Parties that the Hon'ble Supreme Court in Civil Appeal No.2170 of 2017 held that neither the Standard Weights & Measures Act, 1976 read with the enactment of 1985 nor the Legal Metrology Act, 2009 would apply so as to interdict the sale of mineral water in hotels and restaurants at prices above the MRP. It is also contended by the Opposite Parties that their staff has neither behaved arrogantly nor forced the complainant to pay the bill amount and that the said allegation is false and baseless. With the above contentions, submitting that there is no deficiency of service/unfair trade practice on their part, the Opposite Parties sought to dismiss the complaint.
- 4.** As per the docket proceedings, the complainant has filed his evidence affidavit reiterating the averments of the complaint and got marked Ex A-1 to A-10 including the original Bill dt.02/03/2021, the screen shot of the menu card, the copy of the legal notice along with the acknowledgment and postal receipts. The Evidence Affidavit of the Manager and Authorized Signatory of the Opposite Party is filed along with the copy of the Menu card pertaining to the prices of soft drink and water bottle in their Hotel marked as Ex B-1.
- 5.** Based on the facts and material brought on record, and written submissions of both the parties, the following points have emerged for consideration:

- Whether the complainant could make out a case of unfair trade practice on the part of the Opposite Parties?
 - Whether the complainant is entitled for the claim/compensation made in the complaint? To what relief?
6. As per the original Bill filed under Ex A-1, two water bottles (500 ml each) are charged @Rs.40/- and two mini Pet Cola (250 ml each) are charged @Rs.60/- along with the Garlic Chicken Kabab charged @Rs.339/- and the total amount of Rs.439 + CGST Rs.8.47p + SGST Rs.8.47p = Rs.456/- grand total paid by the complainant to the Opposite Parties on 11/04/2021, which not disputed by the Opposite Parties. It is the case of the complainant that the Opposite Party charged Rs.30/- for mini PET COLA (250ml) each whereas, the MRP on the bottle is Rs.20/- and charged Rs.20/- for each water bottle (500ml) when the MRP on bottle is Rs.10/- i.e. in total he was charged extra amount of Rs.40/- (on two bottles of mini PET COLA (250 ml each) and two water bottles (500 ml each). It is the contention of the Opposite Parties that they were charged as per the menu card only (Ex B-1) and the extra charges are for the ambience, fortified their arguments with the observations of *the Hon'ble Supreme Court in the Judgment dt. 12/12/2017 in Federation of Hotel And vs Union of India and Ors.* wherein the issue for consideration was whether charging a price higher than the printed Maximum Retail Price ("MRP" in short) for supply of packaged water bottles during services provided to their customers while in the hotels and restaurants, was in violation of the provisions of The Standards of Weights and Measures (Enforcement) Act, 1985 along with the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and the Legal Metrology Act, 2009 and it was inter alia held that, it was inter alia held that, " *that charging prices for mineral water in excess of MRP printed on the packaging, during the service of customers in hotels and restaurants does not violate any of the provisions of the SWM Act as this does not constitute a sale or transfer of these commodities by the hotelier or Restaurateur to its customers andthat when "sale" of food and drinks takes place in hotels and restaurants, there is really one indivisible contract of service coupled incidentally with sale of food and drinks*" and allowed the appeals holding that, " *neither the*

Standards of Weights and Measures Act, 1976 read with the enactment of 1985, or the Legal Metrology Act, 2009, would apply so as to interdict the sale of mineral water in hotels and restaurants at prices which are above the MRP.”

In the instant case, Ex A-3 purporting to be the menu list on the website of the Opposite Parties show that the price of the Mini Pet Soft Drink (250 ml) is Rs.25/- and the water bottle (500 ml) is Rs.20/- only. Ex B-1 is the menu card filed by the Opposite Parties wherein it is shown that the price of 200 ml Mini Pet Soft drink is Rs.30/- only and the price of 500 ml water bottle is Rs.20/- only. Whether considering the menu list on the website or the menu card filed by the Opposite Parties, it is evident that the 200 ml Mini Pet Soft drink and the 500 ml water bottle are charged extra over the MRP. In this context, it is worth referring to the Legal Metrology (Packaged Commodities) Rules 2011 governing the subject matter under consideration. As per the Legal Metrology (Packaged Commodities) Rules 2011, “Pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity. “Institutional consumer” means the institutions like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions which buy packaged commodities bearing a declaration ‘not for retail sale’, directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes. And Retail sale Price means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and the price shall be printed on the package in the form of Maximum Retail Price. And as per Rule 18(2) of the 2011 Rules ‘No retail dealer or other person including manufacturer, packer, importer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof’.

In this context, it is worth referring to the judgment dt.14/12/2010 of the *Hon’ble National Commission in Hotel Nyay Mandir vs Ishwar Lal Jinabhai Desai*, wherein, it has upheld the order of Bharuch (Gujarat) District Forum imposing a fine on

Hotel Nyay Mandir for charging more than the MRP on some soft drinks. It is also worth referring to the Judgment dt.23/10/2017 of the *Hon'ble Telangana State Consumer Disputes Redressal Commission in Vijay Gopal vs Inox Multiplex*, wherein it was observed that, “ *The Union Ministry of consumer affairs decided to ban the 'dual' MRP policy, a practice through which sellers charge a higher MRP for their products in certain spaces like malls, airports and hotels etc., It was observed that the quality, quantity and weight of these products were exactly the same as the ones sold by common kirana stores at a lower price. The Big companies claimed the Legal Metrology Act was silent on dual MRP so they could charge a different price. The Act has now been amended to prohibit companies from levying two different MRPs for a single product unless done under legal provisions. Clearly, there is no law that permits them to do so. The issue of 'Dual MRP' has been in the limelight for the last one year with more & more people complaining about such practices. All this while, the law was silent on the issue of dual MRP. Recently, on 23rd June 2017, the government has amended the Legal Metrology (Packaged Commodities) Rules, 2011 effectively banning dual MRP. These rules will become effective from 1st January, 2018. The government has now amended these rules by adding the following in rule 18. This clause says, "Unless otherwise specifically provided under any other law, no manufacturer or packer or importer shall declare different maximum retail prices on an identical pre-packaged commodity by adopting restrictive trade practices or unfair trade practices as defined under clause (c) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986)". As per the order, companies will not be allowed to charge a different price for water, soft drinks or snacks at premium locations. The decision was taken after an appeal made by the Department of Legal Metrology of Maharashtra. The LMO cracked the whip on high profile manufacturers for charging a higher MRP at malls, upmarket restaurants, hotels and airports. The National Consumer Disputes Redressal Commission (NCDRC) had also ruled that there cannot be two MRPs, except in accordance with the law. In view of the above legal and rule position the opposite party cannot be said that it is entitled to charge more than the MRP rate fixed outside the premier locations. The MRP rate mentioned on the bottles may be*

due to an understanding between the INOX and the concerned company and it is not as per law and hence it is not binding over the consumers. The further contention of the opposite party is that the price of the water bottle is fixed at Rs.50/- taking into consideration of the maintenance cost and also the capital investment on it and ambience and amenities provided in the multiplex is not a ground to claim higher charges as per law.” It was also mentioned in the said order that, “the matter is brought to the notice of the State Government that charging higher rates at premier locations than outside, not permissible as per law and it amounts to unfair trade practice and the State Government has to take necessary steps to curb the same by giving wide circulation through the print and electronic media with regard to this menace of unfair trade practice at premier locations, i.e., Cinema halls, Malls, restaurants etc or any other place, by establishing Consumer Grievance Cell, and for the State Government to take immediate necessary steps to crack whip on the locations where higher rates are charged than the MRP rates and take appropriate steps by imposing penalty as per the principle laid down by the Hon'ble National Commission, New Delhi.”

It is pertinent that the Opposite Party has not disputed that it is Drive in restaurant and that the customers eat in their cars parked in the open area and that the food is cooked in a grill in open area. So, the contention of the Opposite Party that the charges were as per the menu card only (Ex B-1) and the extra charges are for the ambience, is unsustainable, especially when there is neither any rebuttal of the above averments of the complainant nor any cogent evidence adduced by the Opposite Party in support of their contentions.

In view of the above findings, and the observations of various Fora, this Commission is of the considered opinion that charging the pre-packaged commodities over and above the M.R.P not only amounts to unfair trade practice but is also in violation of the amended Legal Metrology (Packaged Commodities) Rules, 2011 effectively banning dual MRP. Hence, this point is answered in favour of the complaint.

7. In the result, the complaint is allowed in part and the Opposite Party is directed

- i) To refund the amount of Rs.40/- which was excess collected from the complainant, along with interest @6% p.a. from the date of payment till the date of realization;
- ii) To grant an amount of Rs.1000/- (Rupees One Thousand only) towards compensation and costs;
- iii) To stop forthwith dual M.R.P and charging higher rates over and above the M.R.P. on the pre-packaged commodities.

This order be complied with by the Opposite Party within 45 days from the date of receipt of the order.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 21st day of August, 2023.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Lakkireddy Lokesh Reddy, S/o L. Viswanath Reddy,

WITNESS EXAMINED FOR THE OPPOSITE PARTIES

(DW1) Mr. Mudassir Hussain S/o Ahmed Hussain.

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- | | |
|-------|---|
| Ex.A1 | Original bill issued by opposite party No.2, vide bill No. 249 dated 11.04.2021. |
| Ex.A2 | Original payment receipt by swiping ATM, vide invoice No. 001813 dated 11.04.2021. |
| Ex.A3 | Copy of Chicha's menu with prices printed from http://chichas.in |
| Ex.A4 | Copy of demand notice dated 19.04.2021. |
| Ex.A5 | Original payment receipt of India Post for sending demand notice to opposite party No.1 dated 20.04.2021. |
| Ex.A6 | Original payment receipt of Indian post for sending demand notice to opposite party No.2, dated 20.04.2021. |
| Ex.A7 | original acknowledgment from of opposite party No.1. |
| Ex.A8 | Original acknowledgment from of opposite party No./2. |

- Ex.A9 Copy of Delivery confirmation of demand notice to opposite party No.1 printed from India postal website.
- Ex.A10 Copy of delivery confirmation of demand notice to opposite party No.2 printed from Inian Post website.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTIES

- Ex.B1 Copy of Menu card pertaining to the prices of the Soft drink and Mineral water (500 ml).

MEMBER

PRESIDENT

PSK
Read by:-
Compared by :-