

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this 19th day of June 2024

Filed on: 13.03.2018

PRESENT

Shri. D.B. Binu

Shri. V. Ramachandran

Smt. Sreevidhia T.N.

President

Member

Member

C.C. No. 114/2018

COMPLAINANT

Anilkumar TS Menon, S/o. Sivarama Menon, Managing Director, ASHEI, 1st Floor, Suprans Arcade, Aiswarya Road, Near Kaloore International Stadium, Palarivattom-682025.

Vs

OPPOSITE PARTIES

1. Managing Director, DTDC Corporate Office, DTDC House, No. 3, Victoria Road, Bangalore 560047, Karnataka,
2. Regional Manager, DTDC, Koonamthai Pathadipalam Residence Association Block C, Pathadipalam, Edappally, Kochi, Kerala 682024
3. Branch Manager, DTDC, Sundaram Towers, Opp. Govt. Boys Higher Secondary School, High Road Aluva.
4. Martin, Manager, DTDC, Venus Castle, Near Bharath Petrol Pump, Palarivattom-Edappally Old Road, Palarivattom-682025.
(Rep. by Adv. Binu Mathew, A.K. Chinnan Associates, Door No. 66/1302A, Mathew Paily Road, Behind Ernakulam Town Hall, Ernakulam North, Kochi 682018)

FINAL ORDER

D.B. Binu, President

1. A brief statement of facts of this complaint is as stated below:

This complaint was filed under Section 12 of the Consumer Protection Act, 1986. A courier containing eight certificates worth Rs. 11,900 each was sent through DTDC Courier, with tracking number R28597310, on 30th January 2018. This courier, which was supposed to be delivered to Mr. Leo, Head of Department at MBITS, Nellimattom, was mistakenly delivered to Mr. Basil of Kothamangalam. DTDC avoided delivering it to MBITS due to the distance. The courier is still undelivered to the intended recipient.

The issue was reported to the DTDC branch manager in Aluva, who stated that their franchise had delivered the package, but no further action was assured.

When asked for contact information of higher officials, the branch manager was reluctant to provide it. The case number for the complaint is 10680261, related to consignment number R28597310. No action has been taken so far. The relief claimed includes the reissue cost of the certificates amounting to Rs. 95,200 and Rs. 50,000 as compensation for inconvenience.

2. Notice:

The commission sent a notice to the opposite party, who subsequently appeared and submitted their version.

3. The Version Filed by the Opposite Parties:

The opposite parties argued that the complainant used the services for commercial purposes and is therefore not a "consumer" under the Consumer Protection Act. They claimed the complaint is belated and time-barred as per the contract. They also contended that the consignment was delivered to the consignee's address and received by their representative, following the established practice of delivering consignments for MBITS to the office of MAR THOMA CHERIYA PALLI. They denied the allegations of consignment loss and ^{stated} argued that the liability of the opposite parties is limited to Rs. 100/- unless a higher value was declared and surcharge paid. They denied any deficiency in service, negligence, or cause of action and requested the complaint be dismissed.

4. Evidence:

The complainant produced three documents along with the complaint:

1. The complainant sent a letter to the Opposite Parties dated 06-03-2018.
2. A copy of the Franchisee Delivery Run Sheet from 31-08-2018, maintained by DTDC Franchisee (Code No. 0F830), evidencing the delivery of Consignment No. R28597310 to Mr. Leo, HOD, MBITS, received by Mr. Basil.
3. A copy of the Consignment Note issued by the Opposite Parties.

The Opposite Parties filed six documents and marked them as **Exhibits B1 to B6.**

Exhibit B1: Original of standard Consignment Note Leaf bearing No. R 28401234, containing the POD Copy, Sender's Copy, and Accounts Copy (3 Leaves), with the terms and conditions of carriage.

Exhibit B2: Original of Franchisee Delivery Run Sheet dated 07-08-2017 maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, evidencing the delivery of Consignment bearing Airway Bill No. R 700003907680 addressed to Albitta M. Joy, MBITS, Ladies Hostel, and received by Mr. Eldhose.

Exhibit B3: Original of Franchisee Delivery Run Sheet dated 08-08-2017 maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, evidencing the delivery of Consignment bearing Airway Bill Nos. 700009307679 and 700009307678 addressed to Albitta M. Joy, MBITS, Ladies Hostel, and received by Mr. Basil.

Exhibit B4: Original of Franchisee Delivery Run Sheet dated 10-08-2017 maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, evidencing the delivery of Consignment bearing Airway Bill No. X 21690371 addressed to Mathew V.M., MBITS, and received by Mr. Eldhose.

Exhibit B5: Original of Franchisee Delivery Run Sheet dated 21-08-2017 maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, evidencing the delivery of Consignment bearing No. R 26993033 addressed to MBITS and received by Mr. Eldhose.

Exhibit B6: Original of Franchisee Delivery Run Sheet dated 31-08-2018 maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, evidencing the delivery of Consignment bearing No. R 28597310 addressed to Mr. Leo, HOD, MBITS, and received by Mr. Basil.

5) Main Points for Analysis:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

6. Analysis and Legal Reasoning:

A. Maintainability of the Complaint:

As per Section 2(1)(d) of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for consideration that has been paid or promised, partly paid and partly promised, or under any system of deferred payment. The Original Franchisee Delivery Run Sheet dated 31-08-2018, maintained by the Franchisee of DTDC bearing Franchisee Code No. 0F830, produced by the opposite parties (**Exhibit B-6**), evidences the transaction between the complainant and the opposite parties.

The opposite parties argue that the complainant used the services for commercial purposes and is therefore not a "consumer" under the Consumer Protection Act. However, sending a certificate by courier to another person is generally not deemed to be for a commercial purpose. This action typically does

not involve profit-making or commercial transactions but is conducted for personal, educational, or professional reasons.

In the case of *Shriram Chits (India) Private Limited, earlier known as Shriram Chits (K) Pvt. Ltd., v. Raghachand Associates* (2024 LiveLaw (SC) 368), the Honourable Supreme Court affirmed the decision of the NCDRC. The bench observed that unless the service provider proves that the goods/services were availed for commercial purposes by the consumer, the service provider cannot contest the maintainability of the consumer complaint. The Court also stated that the expression 'commercial purpose' has not been defined under the Act. Therefore, the words 'for any commercial purpose' must be understood as covering cases other than those of resale of goods. Persons buying goods either for resale or for use in large-scale profit-making activities will not be considered consumers entitled to protection under the Act. Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986, and this point goes against the opposite parties.

B. Deficiency in Service and Negligence:

In the case before the Honourable State Consumer Disputes Redressal Commission, Chandigarh, *M/S DTDC Courier & Cargo Limited vs. Amrit Lal Satija* (5 October 2012), it was observed:

“22. The Counsel for the appellant, however, placed reliance on *Airpak Couriers (India) Pvt. Ltd. vs. S. Suresh, I* (1994) CPJ 52 (NC), a case decided by a four-member bench of the National Consumer Disputes Redressal Commission, New Delhi, to contend that the complainant was bound by the limited liability clause, contained in consignment receipt Annexure C-1. The perusal of the facts of *Airpak Couriers (India) Pvt. Ltd.'s case* (supra), clearly goes to reveal that the consignor therein had agreed to the terms and conditions of the consignment note that the liability of the courier shall be limited to Rs.100/- only. In the instant case, as stated above, neither the consignor signed the consignment note, admitting the terms and conditions thereof, nor he was read over and explained the same nor he agreed to the same. Thus, the terms and conditions contained in Annexure C-1, being unilateral, in nature, were not binding on the complainant. The facts of the said case, being distinguishable from the facts of the instant case, no help can be drawn by the Counsel for the appellant therefrom. The submission of the Counsel for the appellant, being devoid of merit, is rejected.”

In *DHL Worldwide Express (A Division of AFL Ltd) and Another vs. AGG Exports and Another*, 2009 CTJ 106 (CP) (SCDRC), the State Consumer Disputes Redressal Commission, Punjab, observed that the printed terms on the courier receipts are not binding on the complainant, and the appellants are not to be absolved of their liability after the

their liability corresponded to the losses suffered by the Consumer and the harassment and inconvenience caused to him at the hands of the service provider.

The discrepancies in **Exhibit B6**, where the delivery run sheet lists the consignee as "Mr. Leo / H.O.D" but the recipient as "Bassil," indicate that the consignment was not delivered to the exact consignee. The Opposite Parties failed to contact the complainant to clarify the consignee, leading to the rejection of their submission.

Exhibit B1, a consignment notes with a limited liability clause of Rs.100/-, was not signed by the consignee, and there was no evidence that the terms were explained to or accepted by the complainant. Therefore, the complainant was not bound by these terms.

Legal Precedents:

- **In *Sudhir Deshpande vs. Elbee Services Ltd.***, it was held that limited liability clauses in small print on consignment notes are not binding if not negotiated with the complainant.
- **In *DHL Worldwide Express vs. AGG Exports***, it was observed that printed terms on courier receipts do not absolve couriers of liability if service deficiencies are proven.
- **In *Airpak Couriers vs. S. Suresh***, it was stated that a complainant is bound by a limited liability clause only if they agreed to the terms, which was not the case here.
- **In *Skypak Couriers vs. Consumer Education and Research Society***, it was held that conditions limiting liability must be explicitly agreed upon by the complainant.

We have meticulously considered the complaint and version filed by the parties, and thoroughly reviewed the entire record of evidence, including the judgments related to the issues.

The limited liability clause in **Exhibit B1** was deemed non-binding on the complainant due to the absence of consent, resulting in the rejection of the Opposite Parties' submission. Although the Commission examined the Original Standard Consignment Note Leaf, containing the POD Copy with the terms and conditions of carriage produced by the Opposite Parties (**Exhibit B1**), even using a magnifying lens, it was unable to read or identify any clause indicating that the liability of the Opposite Parties was limited to Rs. 100/- unless a higher value was declared and a surcharge paid.

The Honourable National Consumer Disputes Redressal Commission, in the case of *Blaze Flash Couriers (P) Ltd. vs. Rohit J. Poladiya and Another*, held that:

“8. In support of contention of limited liability, it was contended that in the consignment note, condition had been printed that the liability of the opposite party. Appellant would be limited to Rs. 100. The State Commission rightly rejected the plea on the ground that Ex. P-4 was not signed by the complainant, it was in fine prints, and specific attention was not drawn. The complainant had stated that he was not aware of any statement limiting the liability could not be disputed. This Commission came to consider a similar question of limited liability mentioned in fine prints, in the case of *Blue Dart Express Limited vs. Stephen Livera*, (R.P. No. 393 of 1997 (NC) decided on 14.12.2001)”.

C. Unfair Trade Practice:

The deliberate inclusion of conditions in fine print, which are practically illegible, constitutes an unfair trade practice. This practice aims to obscure important terms and conditions from consumers, thereby undermining transparency and fairness. As such, the Opposite Parties are directed to cease this practice immediately.

The terms and conditions in fine print, designed to be practically illegible, raises significant concerns regarding the Opposite Parties' underlying motives. It underscores the importance of having clear and transparent terms and conditions in contracts, warranties, and agreements to protect the rights of consumers and promote fairness in business practices.

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the opposite parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

Hence, the prayer is allowed as follows:

I. The Opposite Parties shall pay ₹25,000/- (Rupees Twenty-Five Thousand Only) to the Complainant as compensation. This amount is awarded for the

deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the Complainant.

II. The Opposite Parties shall also pay the Complainant ₹10,000/- (Rupees Ten Thousand Only) towards the cost of the proceedings.

III. The Opposite Parties shall immediately cease the unfair trade practice of including terms and conditions in fine print that are practically illegible. Henceforth, all terms and conditions must be presented in a legible and readable manner.

The Opposite Parties are jointly and severally liable to comply with the directives mentioned above within 30 days from the date of receipt of this order. Failure to comply with the payment orders under points I will result in interest at the rate of 9% per annum from the date of filing the complaint (13.03.2018) until the date of full payment realization.

Pronounced in the open Commission on this 19th day of June 2024.


D.B. Binu, President


V. Ramachandran, Member


Sreevidhia.T.N, Member

Appendix

Complainant's Evidence

Nil

Opposite party's Exhibits

Exhibit B1: Original of standard Consignment Note Leaf bearing No. R 28401234, containing the POD Copy, Sender's Copy, and Accounts Copy (3 Leaves), with the terms and conditions of carriage.

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