

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/326/2021
(Date of Filing : 25 Aug 2021)**

1. Nilanjana Chakraborty
7, Baroda Avenue, P.S. Patuli, Kolkata-700084.Complainant(s)

Versus

1. Marco Polo Restaurant
24, Park Street, P.S. Park Street, Kolkata-700016.Opp.Party(s)

BEFORE:

**HON'BLE MRS. Sukla Sengupta PRESIDENT
HON'BLE MR. Reyazuddin Khan MEMBER**

PRESENT: Priyanka Chakraborty, Advocate for the Complainant 1

Dated : 01 Apr 2024

**Final Order / Judgement
FINAL ORDER/JUDGMENT**

SMT. SUKLA SENGUPTA, PRESIDENT

This petition of complaint has been filed by the complainant one Nilanjana Chakraborty U/s 35 of the CP Act, 2019 against the OP Marco-polo restaurant alleging, inter alia that she has gone to the OP restaurant on 26.02.2021 for a dinner along with her relatives with a hope to spend some quality time with sumptuous food. After arrival at the restaurant, one of the employees of the OP asked the complainant to take seat and handed over the menu-card. Accordingly, the complainant ordered the "starter" and also ordered one packaged drinking water along with the starter which were served to them. Thereafter, the complainant ordered the "main course" along with some soft and hard drinks for her relatives which included one branded hard drinks of kingfisher (S) 650 ml for consumption of all.

The complainant further stated after having food and beverages, they requested the concerned employee of OP to provide the bill for payment, the bill was given. On receipt of bill, the complainant was very much surprise to see that the packaged drinking water bottle had been charged with Rs. 30/- and the hard drinks of Kingfisher (S) 650 ml had been charged with Rs. 260/- respectively which was much higher than the maximum retail price (MRP) of the food product printed on the said bottles. They also charged 5 % GST (2.5% CGST and 2.5 % SGST). The OP also charged 10% of total bill amount as service charges amounting to

deficiency illegally. The complainant raised the voice to protest for over billing of branded products and also for illegal service charges.

The employee of the OP restaurant stated that the service charge and the charge of branded products as alleged previously intimated to one of the relatives of the complainant. The complainant then wanted to talk to the owner or manager of the OP restaurant regarding unnecessary over billing but they stated that their owner is also aware about the billing which is usual for "AC restaurant" and they asked to the complainant to pay bill immediately and they threatened the complainant very politely.

Finding no other alternatives, the complainant paid the entire bill amount of Rs. 4,112/- in cash and left the place along with her relatives. The photocopy of said bill in question is annexed herewith as annexure-1.

It is alleged by the complainant that such behavior of the managers and the employees of OP restaurant are amounting to deficiency in service and unfair trade practice. Hence, the instant petition of complaint is filed by the complainant with a prayer for giving direction to the OP restaurant to refund the excess amount paid by the complainant on 26.02.2021 and prayed for giving direction to the OP to pay compensation of Rs. 20,000/- to the complainant for spoiling of the good moment of the complainant and her relative and also giving direction to pay Rs. 10,000/- for harassment, mental pain and agony along with litigation cost of Rs. 10,000/-.

The OP restaurant has contested the claim application by filing a WV denying all the material allegations leveled against it.

It is alleged by the OP in its WV that the petition of complaint is misconceived, false and afterthought. The complainant filed the petition of complainant with malafide intention .

It is further case of the OP that admittedly, the complainant along with her relatives had come to the OP restaurant on 26.02.2021 for a dinner and to spend quality time with sumptuous food.

The OP further stated that from the alleged photocopy of the bill dated 26.02.2021, it cannot be ascertained whether the complainant was accompanied by her relatives in the OP restaurant and how many they were in number. She filed the petition of complaint after 6 months long of the incident. The disputed amount is only of a sum of Rs. 500/-. In the bill of question, the name of the OP restaurant has not been mentioned and no evidence or other documents has been produced by the complainant from which it can be ascertained as to which brand of bottle water or hard drinks were served to her , if at all or whether she had consumed the named items at all. From the alleged bill, it is not proved that actually who paid the bill. So, there was no deficiency in service on the part of the OP and the complainant has filed the case with malafide intention for wrongful gain. So, the petition of complaint is wanting of cause of action and liable to be dismissed.

In view of the fact and circumstances, the points of consideration are as follows:-

1. Is the case maintainable in its present form?
2. has the complainant any cause of action to file the case
3. Is the complainant a consumer?
4. Is there any deficiency in service on the part of the OPs?

5. Is the complainant entitled to get relief as prayed for?
6. To what other relief or reliefs is the complainants entitled to get?

Decision with reasons

All the points of considerations are taken up together for convenience of discussion and to avoid unnecessary repetition.

From the averment of both the parties and also considering the position of law, it is established that the case is well maintainable in the eye of law and this commission has got jurisdiction both pecuniary and territorial to try the case.

From the content of the petition of complaint, it is found that on 26.02.2021 the complainant went for having a dinner at the OP restaurant along with her relatives and also spent quality time with sumptuous food. After having dinner, they asked for bill which was submitted by the employee of the OP restaurant from where the complainant found that the OP demanded the charge of packaged of drinking bottle of Rs. 30/- and for the hard drinks of kingfisher (S) 650 ml of Rs. 260/- respectively which is much higher than the maximum retail price (MRP). Beside charging of 5 % GST, the OP restaurant also charged the service charge of 10 % of total bill amounting of Rs. 360.50/- illegally which is also revealed from annexure-A i.e. photocopy of the bill in question issued by the OP restaurant. The OP though denied the same but in their written argument and also during the course of argument, Ld. advocate of the OP admitted that since the time of pandemic situation, they used to take the service charge from their customers which is illegal but the commission is of same view with the Ld. Advocate for the complainant that it is duty of the OP restaurant to serve the food to his customers and they cannot charge any service charge to that effect. The OP restaurant also can not charge more price for the packaging drinking water bottle and hard drinks as mentioned in the petition of complaint filed by the complainant.

Under such circumstances, this commission is of view that as and when the complainant take the bill of Rs. 4,112/- to the OP restaurant after having a dinner since then she is a consumer within the ambit of CP Act, 2019 and the OP restaurant is a service provider. The OP charged excess amount for 10 % service charge and packaged drinking water bottle of Rs. 30/- and hard drinks i.e. of Rs. 260/- i.e. total amount is Rs. 650.50/- in round figure is of Rs. 651/- .

It is also evident from the materials on record that the complainant requested the employee of the OP restaurant to talk their manger or the owner but they did not allow them and then the complainant was compelled to pay the excess bill amount i.e. of Rs. 4,112/- .

Under such circumstances, it is opined by the commission that being the service provider the conduct of the employee of the OP restaurant amounts to deficiency in service and being the owner of them, the OP restaurant has vicarious liability to refund the excess amount paid by the complainant and their conduct caused mental pain, agony and harassment to the complainant for which the OP restaurant is liable to pay compensation to the complainant along with litigation cost .

In sum, being the consumer the complainant could be able to prove the case beyond reasonable doubt and is entitled to get reliefs as prayed for.

The points of consideration are considered and decided in favour of the complainant.

The complaint do get the decree as prayed for.

Hence,

Ordered

that the case be and the same is decreed on contest against the OP with cost of Rs. 1000/-.

The complainant could get the decree as prayed for

The OP restaurant is directed to refund the amount of Rs. 651/- i.e. excess billing amount to the complainant within 45 days from this date of order.

The OP is further directed to pay compensation of Rs. 1,000/- to the complainant along with litigation cost of Rs. 500/- within 45 days from this date of order id the complainant is at liberty to execute the decree as per law.

Copy of the judgment be uploaded forthwith on the website of the commission for perusal.

**[HON'BLE MRS. Sukla Sengupta]
PRESIDENT**

**[HON'BLE MR. Reyazuddin Khan]
MEMBER**