

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
U.T., CHANDIGARH**

<b>Appeal No.</b>	:	<b>2 of 2024</b>
Date of Institution	:	01.01.2024
Date of Decision	:	15.07.2024

Sh. Vishal Gupta S/o Late Sh. S. N. Gupta R/o House No.3280, Sector 15-D, Chandigarh (UT).

.....Appellant/Complainant

## Versus

1] Swiggy, Head Office Bundl Technologies Pvt. Limited, No.17/9-B, 4<sup>th</sup> Floor, Maruthi Chambers, Rupena Agrahara, Hosur Road, Bangalore – 560068, Karnataka, India through its Chairman/Managing Director.

2<sup>nd</sup> Address:

Swiggy Bundl Technologies Pvt. Limited, registered office at No.55, SY No.8-14, Ground Floor, I & J Block, Embassy Tech Village, Outer Ring Road, Devarbisanahalli, Bengaluru, Bangalore – 560103, Karnataka, India.

2] The Manager, Swiggy, Head Office Bundl Technologies Pvt. Limited, No.17/9-B, 4<sup>th</sup> Floor, Maruthi Chambers, Rupena Agrahara, Hosur Road, Bangalore – 560068, Karnataka, India.

2<sup>nd</sup> Address:

Swiggy Bundl Technologies Pvt. Limited, registered office at No.55, SY No.8-14, Ground Floor, I & J Block, Embassy Tech Village, Outer Ring Road, Devarbisanahalli, Bengaluru, Bangalore – 560103, Karnataka, India.

....Respondents/opposite parties No.1 & 2.

3] My Fresh – Fruits and Vegetables Store, Shop No.2 & 3, Inner Market, 9D, Sector – 9, Chandigarh (UT), Pin Code – 160009.

...Performa Respondent.

**BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.**

**MR. PREETINDER SINGH, MEMBER.**

**Argued by:-**

Sh. Abhishek Sharma, Advocate for the appellant.

Sh. Atul Sharma, Advocate for respondents No.1 & 2.

Respondent No.3 exparte vide order dated 28.02.2024.

**PER PREETINDER SINGH, MEMBER.**

This appeal has been filed by the complainant- Sh. Vishal Gupta (appellant herein), for enhancement of the relief awarded by the District Consumer Disputes Redressal Commission-II, U.T., Chandigarh (in short the District Commission), vide order dated 07.11.2023, whereby the consumer complaint bearing no.268 of 2020 filed by him was partly allowed against opposite parties No.1 & 2 (respondents No.1 & 2 herein) directing them to refund balance amount of Rs.368.50 to the appellant and also to pay a lumpsum amount of Rs.1,500/- as compensation for harassment as well as litigation costs.

2] Before the District Commission, it was the case of the appellant/complainant that during Covid-19 pandemic period when lockdown/curfew was imposed in India, he placed an order on 6.4.2020 with respondents No.1 & 2 for delivery of fruits & vegetables from respondent No.3 and made advance payment on their App for Rs.737/- including delivery charges of Rs.50/-. He received a call from delivery boy of respondents No.1 & 2 at 11.12 A.M. for delivery of the ordered articles and that he was supposed to deliver the articles at the address of the appellant but despite waiting for considerable time for the said articles, the said delivery boy did not turn up. The appellant was surprised to note that later the status of his order was shown as cancelled unilaterally by respondents No.1 & 2. The appellant agitated the matter with the respondents but to his surprise, respondents No.1 & 2 stated that the delivery boy had called him and after getting no response, the order was cancelled, which was not correct, rather the delivery boy did not come to the residence of the appellant to delivery the ordered articles. It was stated that respondents No.1 & 2 refunded only 50% of his amount i.e. Rs.368/- out of Rs.737/- and did not give explanation for deduction for no fault of the appellant. The appellant requested respondents No.1 & 2 to refund the balance 50% amount but they did not do so.

3] Opposite parties No.1 & 2/Respondents No.1 & 2 contested the case and pleaded in their written reply that the appellant/complainant made order for fruits & vegetables from an independent third party seller/merchant – respondent No.3/opposite party No.3 through their platform and respondents No.1 & 2 acted as an intermediary through its web interface. It was further stated that the delivery partner, who was assigned to deliver the order to the appellant/complainant was not allowed to enter the premises of the appellant/complainant owing to Covid protocols and hence, the delivery partner contacted the appellant/complainant a number of time so that the order could be delivered and handed over to him but the

appellant/complainant failed to respond to the call of the delivery partner, therefore, the said order was cancelled and was submitted at Swiggy Hub as the Merchant did not accept the cancelled order on account of prevailing Covid Protocols.

4] The District Commission after hearing the Counsel for the parties and on going through the material available on record, partly allowed the consumer complaint, as stated above. However, this appeal has been filed for enhancement of the relief awarded by the District Commission.

5] We have heard the contesting parties and gone through the material available on the record; impugned order including the written arguments, very carefully.

6] It is the contention of the Counsel for the appellant/complainant that no doubt, the District Commission in its order has acknowledged that the respondents have not delivered the goods as sought to be delivered by the appellant but it failed to hold them liable for deficiency in service and unfair trade practice. It is further argued that unilateral cancellation of the order and subsequent deduction of charges by the respondents was without legitimate explanation. It has further been stated that the District Commission did not sufficiently address the breach of statutory rights under Consumer Protection Act 2019, which protects consumers against such unfair trade practices. Counsel for the appellant also argued that some stringent directions be issued to the respondents, so that, this kind of deficient service is not faced with other consumers. It has further been stated that the compensation awarded by the District Commission being meager should be enhanced looking at the harassment and mental agony suffered by the appellant at the hands of the respondents.

7] Per contra, Counsel for respondents No1. & 2 contested the appeal by filing their written arguments wherein it has been stated that respondents annexed call records, which clearly show that the delivery partner tried to contact the appellant so that the order could be handed over to the appellant but he failed to respond to the calls of the delivery partner and the said order was cancelled. It has further been stated that the grievance of the appellant should have been only against the PDP's for alleged non-delivery of product as the appellant acts only as an intermediary through its web interface for restaurants and independent third party entities.

8] So far as the contention of the appellant that though the District Commission has partly allowed the complaint but it did not hold the respondents liable for deficiency in service and unfair trade practice, is concerned, it may stated here that we endorse the view held by the Ld. District Commission that during the Covid-19 period, various restrictions and behavioral advisories were issued from time to time by health authorities and governments worldwide. These measures, designed to curb the spread of the virus, inevitably led to disruptions across many sectors, including the logistics and delivery services. As a result, the delivery of online-ordered products faced significant delays, cancellations and other operational challenges. Consumers who placed orders during this period often experienced inconvenience due to these disruptions. Given the extraordinary circumstances, it would not be appropriate to hold the online platforms (respondents) strictly liable for non-delivery of products. The unforeseen and uncontrollable nature of the pandemic created numerous obstacles that affected the supply chain and delivery timelines, making it unreasonable to expect normal service levels. Businesses were grappling with workforce shortages, transport restrictions, and health protocols, all of which contributed to the delays and cancellations of deliveries. However, the situation takes a different turn when it comes to the financial transactions involved, particularly the non-refund of payments for undelivered products. In this specific case, the appellant/complainant made a payment of Rs.737/- for an online order. Despite the unavoidable disruption in delivery services, the expectation of a full refund for non-delivered products remains reasonable and fair. The deduction of 50% of the amount, as experienced by the appellant/complainant, raised significant concerns about the fairness and transparency of the business practices of respondents No. 1 and 2. Such deductions, without adequate justification or prior agreement, definitely amounted to unfair trade practice. Consumers, already bearing the brunt of the pandemic's impact, should not face additional financial penalties for services that were not rendered. The unilateral deduction of half the paid amount, without providing the product or a full refund, reflected poorly on the commitment of respondents No.1 & 2 to consumer rights and satisfaction. In such challenging times, it was essential for businesses to demonstrate empathy and fairness, ensuring that consumers were not unduly burdened by policies that lacked transparency and justification. In nutshell, while the non-delivery of products during the Covid-19 period due to unavoidable disruptions was understandable and should not attract liability, the non-refund of the complete payment to the appellant/complainant, coupled with the unwarranted deduction of 50% of the amount, constituted unfair trade practice. Thus, the District Commission, in our considered view, rightly ordered refund of the said 50% deduction and also awarded lump-sum amount as compensation and litigation expenses, which to our mind, is just and adequate. As such, no case is made out for enhancement of the relief awarded by the District Commission.

9] In view of the above discussion, it is held that the impugned order passed by the District Commission, being based on the correct appreciation of evidence and law on the point, does not suffer from any illegality or perversity, warranting the interference of this Commission and the same stands upheld.

10] For the reasons recorded above, this appeal being devoid of merit must fail and the same stands dismissed with no order as to costs.

11] Certified copies of this order be sent to the parties free of charge.

12] File be consigned to Record Room after completion.

Pronounced

15.07.2024

**[JUSTICE RAJ SHEKHAR ATTRI]**

**PRESIDENT**

**(PREETINDER SINGH)**

**MEMBER**

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