

Date of Filing: 02-07-2019
Date of Order: 19-02-2021

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – II, HYDERABAD**

P r e s e n t

SRI VAKKANTI NARASIMHA RAO, B.A., B.L., ...PRESIDENT
SRI P.V.T.R. JAWAHAR BABU, M.A., B.L., ...MEMBER
Smt. R.S. RAJESHREE, B.A., L.L.M., ...MEMBER

Friday, the 19th day of February, 2021

Consumer Case No. 310/2019

BETWEEN:

Baglekar Akash Kumar S/o. B. Prakash Rao, Aged about 21 years, Occ: Student, R/o. Room No.47, E-1 Hostel, O.U Campus, Tarnaka, Hyderabad, T.S. – 500 007. Mobile No. 82973 68722.

...Complainant

AND

More Megastore Retail Limited, Rep. by its MD/Owner, H.No.6-3-562, Erramanzil Colony, Somajiguda, Hyderabad – 500 082. Phone No.799795096.

....Opposite Party

This complaint is coming before us on this 12th day of February, 2021 in presence of the complainant as party-in-person and K. Chaitanya, Advocate appearing for the opposite party and on perusal of material papers available on record, having stood over for consideration till this day, the Commission passed the following:

O R D E R

**(BY SRI VAKKANTI NARASIMHA RAO, HON'BLE PRESIDENT ON
BEHALF OF THE BENCH)**

This complaint is filed on 02-07-2019 by the complainant under Section 12 of Consumer Protection Act, 1986 with a prayer to direct the opposite party to:

1. Provide free carry bags to all customers if they are selling with their company logo (OR) if they want to charge for the carry bag remove their company logo.

2. Pay back Rupees 3/- which was charged to the complainant for the carry bag.
3. Pay compensation of Rs.30, 000/- for mental agony caused to the complainant.
4. Pay punitive damages for an amount of Rs.1, 00,000/- on depositing the Consumer legal aid account.
5. Pay the above amounts with interest @ 12.5% P.A. with costs.

BRIEF FACTS OF THE COMPLAINT:

1. The complainant purchased a product from the opposite party Super Market on 01-06-2019 with bill No.3175-1240192241 at Rs.118/- which includes the prize of the plastic cover which was given to him. The proof of the bill is filed herewith as Ex. A1.
2. The carry bag supplied by the opposite party on collecting Rupees 3/- towards its cost contains the company's name and Logo for which the opposite party was used the complainant as their advertisement agent at the costs of the complainant. The Xerox copy of the carry bag is marked as Ex. A2.
3. Using the Consumer as advertisement agent at his cost tantamount to un-fair trade practice Under Section -2 (1) (r) of the Consumer Protection Act, 1986. Recently the Chandigarh Consumer Court in Dinesh Parshad Raturi Vs. Bata India Ltd., (CC/64/2019) has held that – *“The Bata Company has used the Consumer as if he is the advertisement agent of the opposite party”*. The order copy of this Chandigarh Forum-I as marked as Ex. A3.
4. The complainant approached the Telangana State Information and Alternative Consumer Disputes Centre on 01-06-2019 requesting the Commissioner to take necessary action against the opposite party who committed error. The copy of the complaint dated 01-06-2019 is filed herewith as Ex. A4.
5. During the date of amicable settlement dated 22-06-2019 the opposite party denied all the contents of the complainant stating that the Chandigarh District Forum Judgment doesn't binds on them and also said that they are competent as per various Government orders to charge for the carry bag and also the Judgment of Chandigarh Forum is

pertains to for paper carry bags but not for plastic carry bags which the opposite party sold. The reply dated 22nd June, 2019 filed by the opposite party is filed and marked as Ex. A5.

6. As per the existing Government orders of both Central and State Governments, retailer can charge for plastic carry bags without using their company's logo (Means they shall sell plain carry bags). With the carry bags if any sold having company's logo that should be supplied on free of cost.
7. The opposite party cannot plead ignorance of Law because our Indian Legal Jurisprudence follows the doctrine of '*ignorantia juris nonexcusat, ignorantia facit excusat*', (ignorance of Law is not excusable, whereas ignorance of fact is excusable). Hence the present complaint is filed seeking Redressal.

WRITTEN VERSION OF THE OPPOSITE PARTY:-

The present complaint is neither maintainable in law nor on facts and is liable to be dismissed in limine against the opposite party and at the outset, this opposite party denies all the allegations made in the complaint.

It is well known fact that the purchasing a carry bag having logo printed on it (printing of Registered Trade Mark/Brand name as "More/More Super Market, More Quality 1st) at the opposite party shop is purely at the choice of the complainant.

The opposite party never compelled complainant to purchase the carry bag as alleged in the complaint. There is no rule of law in force stating that carry bags have to supplied free to the complainant (i.e., Consumers) nor there is no bar or restriction imposed on opposite party from collecting charges for carry bag and the sale of plastic carry bags is not a forcible sale rather it is an option for the complainant either to purchase it or to bring their own carry bag or to purchase plastic covers with or without our logo or jute or cotton bags with or without print or plastic baskets or card board boxes and the order dated 22nd October 2018 passed by the District Consumer Disputes Redressal Commission in Ernakulum in the case of "Advocate D.B. Binu Vs. Lulu Hyper Market"

is referred here wherein the Hon'ble Commission held that “ *18 it is made clear that the answering the opposite party are restricted in their right to provide carry bags with their advertisements, if the Customer opt for such an option*”. Moreover opposite party is facilitating its Customers with carry bags of standard quality (having the thickness of the carry bag to 50 microns) in compliance with the Plastic Waste Management Rules, 2011 (amended 2018) and the current legal scenario in India does not restrict customers including complainant to bring their own carry bags in the retail shops or super markets. Hence it is neither an advertisement nor using complainant as their ‘Advertisement Agent’ as alleged and un-fair trade practice as alleged in the complaint and hence the said allegations shall be withdrawn immediately.

It is further respectfully submitted that the Common Order (same is annexure herewith as Annexure-2) dated 28th January, 2019 passed by the District Consumer Disputes Redressal Forum (Central), ISBT Kashmere Gate, Delhi in the cases of **“Radhakrishnan. R Vs. West Side (Karol Bagh), Trent Ltd., and another in Complaint Case No.251/2018 (Date of filing 24th November, 2018) and Radhakrishnan. R Vs. West Side (Karol Bagh), Vishal Mega Mart (Karol Bagh), Airplaze Retail Holdings Pvt. Ltd., and another in Complaint Case No.252/2018 (Date of filing 26th November, 2018)”** referred herein wherein the Hon'ble Forum held that.....in para” 4. *Environment friendly citizens do carry their own shopping bags preferably cloth bags while going for shopping. Complainant did not carry any such bag with him. He wanted a carry bag. Therefore he was charged Rs.10/- for the same. No law is shown under which opposite party is required to give a shopping bag free of cost to its customers or which prohibits advertisement on a shopping bag “.....he (complainant) has not complained that opposite party ever disputed the bill. He (complainant) further not stated as to what prejudice is caused to him.....complaint is devoid of any merit and is accordingly dismissed”*. Hence it is neither an advertisement nor using complainant as their ‘Advertisement Agent’ as alleged an allegation of un-fair trade practice shall be withdrawn and dismissed immediately.

The complainant failed to furnish any relevant documents in support of any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in relation to the service or commodities from the answering the opposite party. The act of answering opposite party to sell plastic carry bags on payment and having printed with the name of the opposite party is in adherence with the Plastic Waste Management Rules, 2016 (as amended in 2018) and does not, therefore fall under the category of Un-fair Trade Practice as defined Under Section 2 (1) (r) of the Consumer Protection Act, 1986. With regard to the allegation of Un-fair trade practice, it is pertinent to devolve deeper into the Plastic Management Waste Management (Amendment) Rules, 2018, Rule 14 read with the Rule 11(1) of the said Rules does not forbid of the sale of plastic carry bags by the retailers to the Customers rather, it expressly mandates the retailers or vendors to manufacture, label and mark the plastic carry bags in order to be eligible for the sale of carry bags to the Customers. Hence the adoption of un-fair trade practice is not made out.

The plastic carry bags have become a menace as they are not easily Biodegradable and are hazardous to environment and as such the government has framed plastic Waste Management Rules in 2011 and amended them from time to time and is discouraging the use of plastic and imposed a ban on plastic carry bags below thickness of 50 microns and the intention was to curb indiscriminate use of plastic bags and reduce their irresponsible disposal and this opposite party has in line view the government policy and Global initiative to restrict the use of plastic.

The decision to charge for the bags was based on the principle known as “Polluters Pay” – an environment practice that is commonly accepted in Europe requiring that responsible for pollution to bear the costs of managing it to prevent damage to human health or the environment. The above Circular also set up some stipulations to this. In order to indiscriminate and discourage to use of plastic carry bags, opposite party has put up prominently display boards in Green Color

with Trees and leaves mentioning “**Go Green**” in the Stores and wording in Red color stating that:-

“We encourage customers to bring their own carry bags” and with the following message

1. In the event you do not bring carry bag, it can be purchased in the store.
2. However, PURCHASE OF CARRY BAG IS NOT COMPULSION, but it is AN OPTION to you
3. In the event, you are compelled to purchase the carry bag, please bring it to the attention of the store manager before you depart from the store
4. We strive to reduce the usage of plastic carry bags as it is detrimental to the environment
5. We believe it is our joint responsibility to ensure that environment is protected for the future Generations.

Hence we make endeavor to reduce the usage of plastic bags and also mentions at the end stating that Let’s pledge to save our beautiful planet”

The photograph of the display is filed along with the counter as Annexure-4. The complainant being an educated person is expected to read the prominent display and follow the instructions and bring own carry bag so as to contribute his bit in saving the environment for future generations to come and complainant has already been aware of the above facts before he purchases from the store of the opposite party and opposite party have not forced complainant to purchase the carry bag as alleged in the complaint and as per the date available with the Retailers Association of India, the consumption rate of plastic carry bags shows a steep 70% drop since after the initiative of charging customers for the carry bags which nonetheless curtailed the process of indiscriminate disposal due to increase of value of plastic carry bags to the customers. Hence there is no un-fair trade practice as alleged by the complainant.

The present complaint has only been filed as means of harass opposite party and being used as money making scheme. The present complaint evinces any material loss or damage or mental agony or physical hardship suffered by the complainant. Hence the opposite party is not liable to pay any punitive damages as claimed by the complainant on the ground of un-fair trade practice alleged. Hence the present complaint is liable to be dismissed with exemplary costs.

Evidence Affidavit of the complainant is filed as PW-1. Ex. A-1 to Ex. A-5 is marked for the complainant. Evidence Affidavit of the Opposite Party was filed through Vinod Kumar who is their Senior General Manager-Legal as DW-1. Ex. B-1 to B-4 marked on behalf of the opposite party. A written argument of the complainant as well as opposite party is filed. Complainant filed citations along with a separate memo. Heard Arguments of both parties. On perusal of the material available on record the points to be answered for determination are:-

1. Whether any deficiency of service is there or any un-fair trade practice is made out upon the part of the opposite parties?
2. Whether the complainant is entitled for the relief sought?
3. To what relief?

POINT NO.1 & 2:-

1. It is an admitted fact that the opposite party collected Rupees 3/- towards the costs of plastic Cover from the complainant under Ex. A1 having Logo of the opposite party which is marked as Ex. A2.
2. Ex. A3 is the order in CC. No.64/2019 issued by the District Consumer Disputes Redressal Forum-I, Chandigarh.
3. Ex. A4 is the complaint lodged by the complainant before the Commissioner, Consumer Affairs, Food & Civil Supplies Department, Somajiguda, Hyderabad.
4. Ex. A5 is the reply given by the opposite party.
5. Ex. B1 is the Letter of Authorization filed by the opposite party.
6. Ex. B2 is the Citation in case No.CC/251/2018 of District Consumer Disputes Redressal Forum (Central) ISBT Kashmere Gate Delhi.
7. Ex. B3 is the Gazette publication of Ministry of Environment, Forest and Climate Change Notification dated 27th March, 2018.
8. Ex. B4 is the Color Printouts of the Display Board.

1. The only dispute under the case in hand is that, the opposite party has been using its esteemed consumers as its Advertisement agents, by selling the carry bags to the customers with their Logo without prominent prior notice and information before the customer makes his choice of patronizing its retail outlets and before the customer makes his selection

of goods for purchase and also without disclosing the silent specifications and price of the carry bags.

2. Disclosing the price of carry bags at the payment counter seems to be undoubtedly an “un-fair trade practice” Under Section - 2 (1) (r) of the Consumer Protection Act, 1986 {Corresponding Section -2 (47) of the Consumer Protection Act, 2019}.
3. As a matter of Consumer rights, the consumer has the right to know that there will be an additional cost for carry bags and also to know the silent specifications and price of the carry bags, before he exercises his choice of patronizing a particular retail outlet before he makes his selection of goods for purchase from the said retail outlet.
4. The complainant relied upon the citation of the National Consumer Disputes Redressal Commission (NCDRC) reported in 2020 SCC Online NCDRC 495 in Revision Petition 975 of 2020 pronounced in Big Bazar (Future Retail Ltd.,) Vs. Ashok Kumar, in a batch Revision Petitions having similar facts while dismissing the Revision Petition of the opposite party by confirming the directions of the concurrent finding given by the District Commission and State Commission in which it observed that in Para No.15, unfair upon the part of the Revision Petitioner.
5. Apart from the above cited observations under the revision petition, the opposite party is selling the plastic bags having their Company Logo due to which Acts of them, they are using the complainants as tool of their Advertisement that leads to adoption of un-fair trade practice apart from deceptive nature of services and committal of spurious acts that should be highly objectionable. With the above observations we answered these points accordingly in favour of the complainant.

POINT NO.3:-

In the result, the complaint is allowed in part, directing the opposite party to:

1. Provide free carry bags to all customers if in case they printed their Company Logo on the carry bags.
2. However the opposite party is at liberty to charge for the plain carry bags, with prior intimation and consent of Consumers and by displaying the information at conspicuous places in the Business premises.
3. Pay back Rs.3/- which was charged to the complainant with interest @ 12% p.a. from 1-06-2019 till its realization.
4. Pay Rs.15, 000/- (Rupees Fifteen Thousand only) towards compensation for collecting Rs. 3/- from the complainant for the cost of carry bag having the Company Logo, for which the opposite party utilized the complainant as tool of their Advertisement, which amounts to adoption of un-fair trade practice with deceptive nature apart from spurious Acts.
5. Pay Rs.1500/- (Rupees Fifteen Hundred only) towards cost of the proceedings.
6. Rest of the claims of the complainant is dismissed.

Time for compliance is 45 days from the date of receipt of this order.

Dictated to Stenographer, Typed by him, corrected and pronounced by us in the open Commission today the 19th day of February, 2021.

MALE MEMBER

LADY MEMBER

PRESIDENT

APPENDIX OF EVIDENCE**Witnesses examined for complainant**

Baglekar Akash Kumar (PW1)

Witnesses examined for Opp.party

Vinod Kumar (DW1)

EXHIBITS	DESCRIPTION OF THE DOCUMENT	DATE OF DOCUMENT	DATE OF MARKING
Marked for Complainant			
Ex. A1	Copy of Tax invoice	01-06-2019	26-11-2019
Ex. A2	Copy of carry bag		26-11-2019
Ex. A3	Copy of Chandigarh Judgment		26-11-2019
Ex. A4	Copy of Letter	01-06-2019	26-11-2019
Ex. A5	Copy of Letter	22-06-2019	26-11-2019
Marked for Opposite party			
Ex. B1	Copy of Letter Authority	02-05-2019	23-01-2020
Ex. B2	Copy of Final Judgment		23-01-2020
Ex. B3	Copy of Notification		23-01-2020
Ex. B4	Copy of Go Green Display Board – More Mega Store		23-01-2020

MALE MEMBER

LADY MEMBER

PRESIDENT