

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
ERNAKULAM**

**Dated this the 30<sup>th</sup> day of November, 2023**

Filed on: 20/08/2019

**PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

**C. C. No.318/2019**

**COMPLAINANT**

Unmesh V.,

(Rep. by Adv. Tom Joseph,

**THE OPPOSITE PARTIES**

1. Vijayan George, Proprietor, M/s. St Mary's Catering,

(Rep. by Adv.s Joshy Joseph.

2. George Kuriakose,

**FINAL ORDER**

**D.B.Binu, President:**

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

The complaint is filed under Section 12 (1) of the Consumer Protection Act, 1986. The Complainant received an invitation to the marriage of the 2nd opposite party's son, which took place on May 5, 2019, at St. Stephen's Church, Chorakuzhy. The marriage reception was held in the church auditorium, and the food was supplied by the 1st opposite party. The complainant and other guests consumed the food, with the 2nd complainant being the original consumer as he had placed the food order. Later that night, the complainant experienced severe stomach discomfort and frequent loose bowel movements, leading him to seek medical attention at Devamatha Hospital, Koothattukulam. His condition was diagnosed as infective diarrhea, and he was hospitalized at Caritas Hospital, Kottayam, for three days, incurring treatment expenses of Rs. 11,845.

Several other attendees also suffered from diarrhea and vomiting, prompting an inspection by the Koothattukulam Municipality's health wing of the 1st opposite party's catering unit. The complainant, a civil excise officer, had to take a week of leave due to the food poisoning, causing him severe pain, mental anguish, and hardships. The complainant argues that the supply of contaminated and unsafe food constitutes a deficiency in service and unfair trade practices. Despite serving a lawyer's notice, the 1st opposite party denied liability for compensation.

The complainant seeks Rs.50,000/- (Fifty thousand only) as compensation for the mental agony, financial loss, and hardships endured due to the 1st opposite party's supply of unsafe food. The complainant requests the relief sought in the previous paragraph, along with the cost of the proceedings.

## **2) Notice**

The commission sent notices to the opposite parties, but despite accepting the notices, the opposite parties did not submit their versions. Consequently, they are set ex-parte.

## **3) . Evidence**

The complainant had filed an ex-parte proof affidavit and 6 document that was marked as Exhibits-A-1 to A6.

**Exhibit A-1:** Marriage invitation card.

**Exhibit A-2:** copy of the medical bill.

**Exhibit A-3:** Copy of the letter provided by the Superintendent of the Primary Health Centre, Koothattukulam, to the Secretary of Koothattukulam Municipality.

**Exhibit A-4:** Copy of the notice issued by the health inspector to the 1st opposite party.

**Exhibit A-5:** Office copy of the lawyer's notice sent to the 1st opposite party.

**Exhibit A-6:** Copy of the reply notice from the 1st opposite party.

## **4) The main points to be analysed in this case are as follows:**

- 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?

5) The issues mentioned above are considered together and are answered as follows:

In the current case at hand, in accordance with Section 2(d)(ii) of the Consumer Protection Act, 1986, it is established that the beneficiary of services is considered a consumer. This principle holds true when a person engages services for either their own use or on behalf of another person. Consequently, the complainant qualifies as a consumer, as per the definition outlined in the Consumer Protection Act of 1986. Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986. (Point No. i) goes against the opposite parties.

The complainant alleges suffering from food poisoning due to the consumption of contaminated food supplied by the 1st Opposite Party at a wedding reception hosted by the 2nd Opposite Party. This constitutes a deficiency in service and potentially unfair trade practice, as per the Consumer Protection Act, 1986.

We have heard the counsel representing the complainant. The complaint pertains to the supply of unsafe food at the marriage reception, leading to food poisoning among the invitees, including the complainant. After consuming food provided by the 1st opposite party, the complainant experienced severe stomach discomfort and loose bowel movements in the evening. His condition worsened, and he sought initial medical aid at Devamatha Hospital, Koothattukulam, before being transferred to Caritas Hospital, Kottayam, for further treatment. At Caritas Hospital, he was diagnosed with infective diarrhea and hospitalized for three days.

The 1st opposite party appeared before the commission but did not provide any response. The complainant submitted a proof affidavit, and **Exhibits A1 to A6** were presented as evidence. **Exhibits A3 and A4** specifically support the claim of food poisoning resulting from the food supplied by the 1st opposite party.

The argument contends that the 1st opposite party had a duty to supply safe food, and their failure to do so constitutes a deficiency in service. As a result, the complainant seeks compensation in light of these circumstances.

In conclusion, the complainant prays for the resolution of the complaint based on the presented evidence and arguments.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written versions in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The opposite parties, despite being served with the notice, did not challenge the allegations made by the complainant. This conscious failure to file their written version is considered an admission of the allegations against them. As per legal precedent, this stance of the opposite parties is not credible, and we have no reason to disbelieve the complainant's claims in this matter.

**The Honourable National Consumer Redressal Commission [Yum Restaurants (India) (P) Ltd. v. Kishan Hegde, 2020 SCC Online NCDRC 8, decided on 05-02-2020]** dealing with a complaint in regard to unhygienic food that emitted a foul smell causing food poisoning to the complainant, held that:

**"If a consumer files an affidavit in the consumer complaint instituted by him stating therein that the food served to him was rotten/stale/inferior in quality, such an affidavit**

**will be sufficient to discharge the initial onus placed upon the customer."**

**Issue ii):**

We have heard from Sri. Tom Joseph, the counsel representing the complainant. The complaint pertains to the supply of unsafe food at the marriage reception, leading to food poisoning among the invitees, including the complainant. After consuming food provided by the 1st opposite party, the complainant experienced severe stomach discomfort and loose bowel movements in the evening. His condition worsened, and he sought initial medical aid at Devamatha Hospital, Koothattukulam, before being transferred to Caritas Hospital, Kottayam, for further treatment. At Caritas Hospital, he was diagnosed with infective diarrhea and hospitalized for three days.

The 1st opposite party appeared before the commission but did not provide any response. The complainant submitted a proof affidavit, and **Exhibits A1 to A6** were presented as evidence. **Exhibits A3 and A4** specifically support the claim of food poisoning resulting from the food supplied by the 1st opposite party.

The argument contends that the 1st opposite party had a duty to supply safe food, and their failure to do so constitutes a deficiency in service. As a result, the complainant seeks compensation in light of these circumstances.

**Issue iii):** In conclusion, the complainant prays for the resolution of the complaint based on the presented evidence and arguments. The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

**Issue iv):**

The opposite parties' conscious failure to file their written versions in spite of having received the Commission's notice to that effect amounts to an

admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

The opposite parties, despite being served with the notice, did not challenge the allegations made by the complainant. This conscious failure to file their written version is considered an admission of the allegations against them. As per legal precedent, this stance of the opposite parties is not credible, and we have no reason to disbelieve the complainant's claims in this matter.

When the complainant does not seek any compensation against the second opposite party, the Commission's order is restricted to the first opposite party.

We find that issues (I) to (IV) are decided in favour of the complainant due to the substantial deficiency in service and unfair trade practices by the first opposite party. As a result of the negligence of first opposite party, the complainant has endured significant inconvenience, mental distress, hardships, and financial losses.


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

Hence the prayer is partly allowed as follows:

- I. The 1st Opposite Party shall pay Rs.30,000/- (Rupees Thirty Thousand only) as compensation for the deficiency in service and unfair trade practices committed by them, as well as for the mental agony, physical hardships, damages, including loss of work, and inconvenience caused to the complainant.
- II. The Opposite Parties shall also pay the complainant Rs.10,000/- (Rupees Ten Thousand only) towards the cost of the proceedings.

The 1st Opposite Party shall be responsible for complying with the directives mentioned above, which must be adhered to within 30 days from the receipt of a copy of this order. Failure to comply will result in interest being charged at a rate of 9% from the date of filing this case (20.08.2019) until the date of payment.

Pronounced in the Open Commission on this the 30<sup>th</sup> day of November, 2023

  
D.B.Binu, President

  
V.Ramachandran, Member

Sreevidhia.T.N, Member