

Date of Registration of the Complaint: 25.03.2019

Date of Order: 30.06.2022

**BEFORE THE DISTRICT COMMISSION-II AT
VISAKHAPATNAM**

P r e s e n t:

1. Smt. G Venkateswari, M.Sc,LLB.,
President
2. Smt. P Vijaya Durga, B.Com, B.L.,
Women Member
3. Sri. Karaka Ramana Babu, M.Com, M.B.A., LL.B.,
Member

Thursday, the 30th day of June, 2022

CONSUMER CASE No.90/2019

Between:

The Consumer Rights Organization (CRO)/ Upbhokta Adhikar Sangthan, rep., by its President, Sri. Vikas Pandey S/o late Sri Mohan Pandey, Hindu, aged 38 years, office situated at 302, Sundar Towers, Veterinart Colony, near Rama Talkies, Visakhapatnam-530040.

... Complainant

And:-

1. The Park Hotel represented by its Managing Director, Beach Road, Visakhapatnam-530023, Andhra Pradesh.
2. General Manager, The Park Hotel, Beach Road, Visakhapatnam-530023, Andhra Pradesh.

... Opposite Parties

This case is coming on 30.06.2022 for orders before us in the representation of Complainant Inperson, and Sri. E.V.Narasimha Rao & B.K.Naidu, Advocates for the Opposite Party 1& 2 , this Commission made the following:

ORDER

(As per Sri. Karaka Ramana Babu, Honourable Member, on behalf of the Bench)

I. The complainant has filed complaint on behalf of defacto complainant against the opposite parties seeking the Honourable commission to pass award in his favour, and to refund the amount Rs. 120/- (Rupees one hundred and twenty only), apart from compensation of Rs.2,00,000/- (Rupees two lakhs only) towards Compensation for causing mental agony on account of deficiency in service coupled with unfair trade practice by the opposite parties to the complainant along with costs and also prays for such other relief or reliefs if any and necessary in the circumstances of the case.

II. BRIEF FACTS OF THE COMPLAINT:

01. The case of the complaint in brief is that the complainant herein is the Consumer Rights Organization, which is an Voluntary Organisation established to protect the rights of the consumers and registered before the Registrar of Societies vide Registration No.05/23/01/08574/10, being represented by Vikas Pandey, President of Andhra Pradesh on behalf the defacto complainant Smt. Gayatri Balla D/o Mallayya Balla who is being aggrieved by the negligent and deficient acts of the opposite parties herein.

02. The defacto complainant is house wife and resident of M.V.P Colony, Visakhapatnam and the 1st opposite party is the Managing Director and the 2nd opposite party is the General Manager of the 1st opposite party and they are in the field of Hotel Business and Services in the name and style of The Park Hotel.

03. On 10-11-2011 defacto complainant/customer visited the Opposite Party Restaurant and had Buffet Breakfast for 2 Nos. and cost per head is Rs. 600/- and thus the total cost of the Buffet Breakfast is Rs. 1,200/- and imposed Central GST @9% and SGST @9% and vista 10% Service Charge @ Rs. 120/- and the bill was issued for Rs. 1,536/-, vide Bill NO. V0016531, dated 10-11-2018.

04. The customer as usual paid the entire bill amount. After seeing the bill, she found that the vista Service Charge is imposed @Rs.120/- besides GST which is not necessary and hence, she questioned the same and the Opposite Parties Personnel instead of pacifying the issue, gave a vague and arrogant replies and thus insulted her, which is ridiculous and unfair.

05. On 14-02-2019 the defacto Complainant made a compliant to Consumer Rights Organization to do justice and they sent a mail on 19-02-2019 to the 2nd Opposite Party regarding their unfair trade practice that imposing service charges on the customers for taking necessary action. The Opposite Party gave a reply on 22-02-2019 stating that the payment of Service Charge is "Completely at the discretion of the guest."

06. Imposing service tax besides GST on other than menu based food items, is highly illegal, unfair and arbitrary and also for unlawful gain from the guests to enrich themselves and the Opposite Parties would have informed the levying of Service Tax on the bill before billing to the defacto-complainant but straight away issuing bill including CGST, SGST along with Service Charge is illegal, it shows the deficiency in service on part of the opposite parties.

07. The Opposite Parties are not law abiding citizens and they have no respects towards courts of law whereas the Defacto Complainant is a house wife and

having children and with full of responsibilities and suffered with social stigma before his friends circle in the society due to the negligent and unfair trade practice of the Opposite parties, they suffered a lot of mental agony which cannot be estimated in terms of money, but the Opposite Parties are liable to pay amounts towards compensation for causing mental agony and financial hardship. Hence this complaint.

III. BRIEF FACTS OF THE COUNTER FILED BY THE OPPOSITE PARTIES:

01. The material allegations stated in the compliant all are false, not true, invalid and not binding on the opposite parties and that the complainant is put to strict proof of the same. The above complaint is not maintainable both under law and fact and the same is liable for dismissal.

02. The complainant has not visited the Opposite Parties restaurant. No document has been filed to prove the status of the Complainant and hence the above complaint is liable for dismissal. That no deficiency of service has been made out in the complaint or through documents filed and hence the instant complaint is liable to be dismissed.

03. It is submitted that the Customer is an educated lady and she has gone through the MENU and has voluntarily paid the bill amount knowing pretty well that she has accepted the request of the person who has rendered service and hence she cannot now turn around the claim adverse to it.

04. It is submitted that the present case is not for levying compulsory service charge but an option given to the customer either to pay or to avoid it at his/her discretion.

05. Customer wantonly has paid the amount and now she has raised claim before this Hon'ble Forum. It is ridiculous on the part of the Complainant to blame this Opposite Parties that it has no respect towards law and courts. Opposite Parties has utmost respect towards law and its implementation through court and that is the reason why this opposite party has given a prompt reply with utmost respect to the query raised by the authorized person.

06. There is absolutely no deficiency of service as claimed by the Complainant and there is no unfair trade practice at all and absolutely no deceptive or fraudulent act on the part of this Opposite Parties so as to bring it into the purview of unfair trade practice.

07. After being satisfied with the service provided by the bearer, the customer, depending upon the degree of satisfaction giver certain amount as

TIP and any dissatisfaction regarding the service of the bearer the Complainant would have refused to pay the amount and the silence of the Complainant and making payment amounts to giving consent for the bill and hence the present complaint is not maintainable.

08. Nowhere in the complaint it was meted out as to how the Complainant was put to mental agony and also claim of the Complainant to the tune of Rs. 2,00,000/- (Rupees two lakhs only) is not at all substantiated by the averments made in the complaint, therefore opposite parties are pray that the Hon'ble Forum may be pleased to dismiss the complaint with costs, in the interest of justice.

III In order to pursue the case of the complaint, complainant filed the documents 1 to 5 to substantiate their case and opposite parties are filed the documents 1 to 4 to defend their case.

IV The complainant (Voluntary organisation) has filed evidence affidavit and got the documents marked as Exhibits and Ex A1 is the original Bill issued by the Opposite Parties to the Complainant dated 10-11-2018, Ex A2 is the original Letter addressed by the Defacto Complainant to Consumer Rights Organization dated 14-02-2019, Ex A3 is the computer generated copy of E-mail sent by Consumer Rights Organization to the Opposite Parties dated 19-02-2019, Ex A4 is the computer generated copy of E-mail reply sent by the Opposite Parties dated 24-02-2019 and Ex A5 is photo copy of Registration Certificate of the Organization dated 07-04-2010 and on behalf of opposite parties its authorized signatory has filed evidence affidavit and got the documents marked as Exhibits and Ex B1 is photo copy of menu card of the opposite parties hotel, Ex B2 is photo copy of Menu card with prices and Mentioned below of the menu card that "we levy 10% as service charge and is at your discretion, Ex B3 is photo copy of Menu of Hotel Novotel, and Ex B4 is the photo copy of Letter addressed by Deputy Secretary to the Govt. of India To The Secretary, Food, Civil Supplies and Consumer Protection of All States/UT Governments Clarification regarding service charges, to defend their respective case.

V The Complainant and opposite parties have filed their written arguments and additional written arguments along with citations and submitted oral arguments in support of their respective case.

a. The Complainant quoted the following citations to support their case:

- i. DCDRC Kolkata unit -II (Central) in CC 391 of 2019.
- ii. NCDRC III (2017) CPJ 494 (NC)

- b. Opposite parties quoted the following citations to defend their case.
 - i. Mohinder Kaur Vs Sant Paul Singh (civil appeal 2869-2870 of 2010 in Supreme Court of India)
 - ii. Janki Vashdeo Bhojwani & Anr. Vs Indusind Bank Ltd., & Ors (civil appeal 6790 of 2003 in Supreme Court)

VI Points for determination:

- a. Whether the Complaint filed on behalf of defacto Complainant is proper?
- b. Whether there is any deficiency of service coupled with unfair trade practice on part of the opposite parties?
- c. Whether the complainant is entitled for any compensation and costs as prayed for?
- d. Whether the persons representing both the parties have locus standi or proper authorization to represent before this consumer forum?
- e. For such other relief or reliefs as the Honourable commission may deem fit and proper in the facts and circumstances of the case.

VII ANALYSIS & LAW:

As all the points for consideration are inter-connected, they are discussed combined as follows:

As per the Consumer Protection Act, deficiency is defined in Section 2(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service

As per the Consumer Protection Act, unfair trade practice is defined in Section 2(r) is unfair trade practices means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

Unfair trade practices refer to businesses using deceptive, fraudulent, or otherwise unethical methods to gain an advantage or turn a profit.

It is needless to say that the good will of a business concern placed a pivotal role for its success. In other words, success of a business concern always depends on its good will in the market and in the eye of customers and creditors. For any reason, if good will of a business concerns tarnishes or its image comes down in the business circle, the business will certainly get set

back. Therefore, those who are responsible for sullyng the public image of the business concern are required to compensate for the same.

Any business organization depends on customers only but not vice versa.

Both the Complainant (Voluntary Organisation) as well as the Opposite Parties (hotel) are arguing at length about their own organisations reputation by leaving aside and dumping the interest of a customer i.e., the defacto complainant herein.

It is opt to mention here that a famous quote by the father of the nation M.K. Gandhi is “A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work – he is the purpose of it”.

In this case as per A1 and A3, it has to be presumed here that the Opposite Parties have admitted the fact of collecting the service charge besides GST from the defacto Complainant (Smt. Gayatri Balla), it itself adverse inference has to be taken against the Opposite Parties , which purely causes under the unfair trade practices on part of the Opposite Parties.

Now the point for consideration is whether the complainant (Voluntary Organisation) file the Complaint on behalf of defacto complainant is proper?

Any voluntary consumer association registered under any law in force, can file a complaint on behalf of a consumer.

The concept of representative litigation has been given effect to by this act and this novel provision which helps the majority of Indians get redressal for their grievances especially when they are illiterates and ignorant of their rights and procedure.

In fact the role of the Consumer Associations are now extended beyond the normal activities of consumer awareness campaigns, agitations, taking up consumer’s cause with the concerned parties, negotiating and settling, and representing consumer issues before Government, by filing complaints and representing the consumers before consumer fora.

The consumer need not be a member of a particular association for the association to file a complaint on his behalf, provided the Voluntary Consumer Association is registered under Companies Act, 1956 or Societies Act or under any law for the time being in force, with the objective of promoting and protecting interests of consumers.

National Commission held that authorized representative could appear in forum on behalf of Consumer. In Voluntary Organisation in Interest of Consumer Education Vs. Registrar Tamil Nadu SCDRC 2003 CTJ 683 (NC).

Thus the Voluntary Organizations can file complaints on behalf of the consumers, provided the said organization is registered and in force coupled with proper authorization from the consumer. The rigid principle of locus standi is not applicable to the consumer disputes initiated under this act. However, in this case, the complainant has failed to file any document to show that proper authorization is there from the consumer and also no bye laws/ articles of association of the organization were filed, so as to come to a conclusion that whether the complainant can run its organization in Andhra Pradesh in view of exhibit A5, certificate of registration that took place in state of Madhya Pradesh.

The representatives of both the opposite parties have failed to file proper authorization to represent on behalf of the Managing Director and the General Manager of the Opposite Parties 1 and 2.

In any view of the matter, it is pertinent to mention here that this matter was reopened on a petition filed by the complainant to determine on the question of proper authorization on behalf of the opposite parties.

The consumer commission is of an opinion that both the parties have failed to file proper authorization to represent their respective case.

In citations filed by the Complainant in III (2017) CPJ 494 (NC), the facts of the case reveals that representative organisation may represents with a proper authorization and documents filed to proof of organisation is registered, bye laws/ articles of association and forces in law, Where as in this case no such documents filed to prove the proper authorization as such. This citation is no way helpful to the Complainant.

The citations filed by the Opposite Parties are no way connected to the present case. Facts of the present case and facts in the citation are not one and the same, thereby the same is noway helpful to the Opposite Parties.

Exhibits A1, A3 & A4 are not disputed by the opposite parties. The exhibits B1 to B4 are not relevant to the defence of the opposite parties.

The citations filed by the Complainant i.e., DCDRC Kolkata unit-II (central in CC 391 of 2001 that service charge collected in hotels /restaurants is illegal and it falls under the unfair trade practise by the Opposite Parties towards defacto complainant.Hence there is unfair trade practice on part of the opposite party towards the defacto complainant is proved.

VIII CONCLUSION & RESULT:

The above discussion shows that collecting service charge besides GST, inaction and the recalcitrant behaviour of the opposite parties are unjust and

illegal towards defacto complainant, it is nothing but a deficiency of service coupled with unfair trade practice on the part of the opposite parties. As a result of the same, the defacto complainant has suffered mental agony due to acts of the opposite parties. However, aggrieved person cannot lose her case basing on procedural aspects in representing her before the commission, if so, the main concept to protect consumers from the sellers/service providers against the deficiency in service and unfair trade practices is defeated.

The objective of the consumer commissions are to safe guard and protect consumers against deficiency of service and unfair trade practices in the society.

The voluntary organization is only entitled for costs, if any awarded by the commission and the defacto complainant is entitled for the other reliefs. However, in this matter, the complainant, who is an organization in its prayer has sought a decree in favour of the organization but not in favour of the defacto complainant, which necessitated this commission to use its inherent powers specifically granted relief to the consumer as she should not suffer on account of the failure on part of the organisation.

As the Complainant has failed to neither show nor plead as to how the defacto complainant is entitled for compensation, more particularly when no affidavit was filed by the defacto complainant on oath to solemnly verify the facts in view of lack of authorization from her to the complainant. Hence she is not entitled for compensation.

Though, the Opposite Parties took a plea that guest has paid the service tax voluntarily at her discretion towards tip, the same is unbelievable as any customer will pay tip directly to the bearer as per their discretion. However, the opposite parties have collected Rs. 120/- (Rupees one hundred and twenty only) towards service charges @ 10 % on the buffet breakfast, which cannot be considered as tip as exhibit A1 bill contains the same. The contention of the opposite party that the guest paid voluntarily is not proved as voluntarily payments will not be in percentage and will not be added in the bill.

However, in view of admission on part of the opposite parties on the receipt of service tax and also prima facie the exhibits A1, A3 and A4 clearly shows that service tax has been collected from the defacto complainant, which were not denied by the opposite parties, the commission has arrived at an opinion that just and reasonable relief has to be awarded to the defacto complainant in view of unfair trade practice and mental agony suffered by her on account of the arrogant replies made by the personnel of the opposite parties when she questioned about collection of service charges and the arrogant replies will

definitely cause social stigma to the defacto complainant as such she is entitled for some sort of relief.

In the result, the complaint is partly allowed on basis of principles of natural justice in favour of defacto complainant i.e. The opposite parties are directed to provide one day (i.e. 24 hours) executive suite accommodation to defacto complainant(Smt. Gayatri Balla) plus one person (Two persons in total) with free of cost in opposite parties hotel i.e The Park Hotel at Beach Road, Visakhapatnam on the account of unfair trade practice committed by them, within 30 days from date of written intimation by the defacto complainant, failing which the opposite parties are directed to pay an amount of Rs.12,000/- (i.e. 100 times of Rs. 120/-) to defacto complainant jointly and severally. Time for compliance is 45 days from the date of intimation by defacto complainant. Failure to comply with this order entitles the defacto complainant (Smt. Gayatri Balla) to execute this order as per law.

The Sheristhadar is directed to send this order copy to the both Parties including the defacto Complainant (Smt. Gayatri Balla) address mentioned in Ex A2.

Dictated to the Steno, and transcribed by her, corrected and pronounced by us in the Open Commission, this 30th day of June of 2022.

Sd/-	Sd/-	Sd/-
President	W. Member	Member

APPENDIX OF EVIDENCE

For the Complainant:

S.NO	Date	Description of the documents	Remarks
Ex. A-1	18-11-2018	Bill issued by the Opposite Parties to the Complainant	Original
Ex. A-2	17-02-2019	Letter addressed by the Complainant to Consumer Rights Organization	Original
Ex. A-3	19-20-2019	E-mail sent by Consumer Rights Organization to the Opposite Parties	Computer Gen. Copy
Ex. A-4	22-09-2019	E-mail reply sent by the Opposite Parties	Computer Gen. Copy
Ex. A-5	07-04-2010	Registration Certificate of the Organization	Photocopy

For the Opposite Parties:

S.NO	Date	Description of the documents	Remarks
Ex. B-1		Menu card of the opposite parties Hotel	Photostat
Ex. B-2		Menu card with prices and Mentioned below of the menu card that "we levy 10% as service charge and is at your discretion	Photostat
Ex. B-3		Menu of Hotel Novotel	Photostat
Ex. B-4	14-12-2016	Letter addressed by Deputy Secretary to the Govt. of India To The Secretary, Food, Civil Supplies and Consumer Protection of All States/UT Governments Clarification regarding service charges	Photostat

Sd/-
President

Sd/-
W. Member

Sd/-
Member