

\$~3(SB) & 4(SB)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10683/2022 & CM APPL. 31033/2022**

NATIONAL RESTAURANT ASSOCIATION OF INDIA
& ORS. Petitioners

Through: Dr. Lalit Bhasin, Ms. Nina Gupta,
Ms. Ananya Marwah, Ms. Vaishnavi
Gupta & Mr. Ajay Pratap Singh,
Advocates. (M: 9953947026)

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Chetan Sharma ASG with Mr.
Sandeep Mahapatra, CGSC, Ms.
Kritika Sharma and Mr. Abhinav
Bansal, Advocates for R-1 & 2. (M:
9811472444)

4(SB) AND

+ **W.P.(C) 10867/2022 & CM APPLs. 31645/2022, 38599/2022**

FEDERATION OF HOTEL AND RESTAURANT ASSOCIATIONS
OF INDIA & ORS. Petitioners

Through: Mr. Sameer Parekh, Mr. Sumit Goel,
Ms. Sonal Gupta, Ms. Swati
Bhardwaj & Mr. Abhishek Thakral,
Advocates. (M: 8077855788)

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Chetan Sharma ASG with Mr.
Sandeep Mahapatra, CGSC, Ms.
Kritika Sharma and Mr. Abhinav
Bansal, Advocates for R-1 & 2.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **24.07.2023**

1. This hearing has been done through hybrid mode.

2. Vide the last order dated 12th April, 2023, the following directions were issued by the Court:

“9. Considering the submissions made and the concerns raised on both sides, the following directions are issued:

*i. At the outset, it is noticed that both these petitions have been preferred by associations/federations of hotels and restaurants. In order to have clarity as to the members qua whom the present writ petitions have been preferred, taking into consideration, orders passed in **WP(C) 3324/1999 titled ‘Kuber Times Emp. Assn. v. State & Ors.’**, both the associations/federations shall file a complete list of all their members who are supporting the present writ petitions. The said list shall be filed by 30th April 2023. The Registry to compute the court fee which would be payable, which shall also be informed to the Petitioners. The necessary court fee shall then be deposited by the Petitioners.*

ii. Ld. counsels for the associations/federations have submitted that they have lakhs of members. In view of the fact that both these associations/federations have preferred these writ petitions, this Court is of the opinion that the associations/federations ought to consider the following aspects and place their stand before the Court:

a. The percentage of members of the Petitioners who impose service charge as a mandatory condition in their bills.

*b. Whether the said members and the associations/federations would have any objection in the term ‘**Service Charge**’ being replaced with alternative*

terminology so as to prevent confusion in the minds of the consumer that the same is not a Government levy. Some terminologies that could be considered are 'Staff welfare fund', 'Staff welfare contribution', 'Staff charges', 'Staff welfare charges', etc. or any other alternative terminology.

c. The percentage of members who are willing to make service charge as voluntary and not mandatory, with option being given to the consumers to make their contribution to the extent that they are voluntarily willing subject to a maximum percentage that may be charged."

3. From the above directions which were issued by the Court, it is evident that the Petitioners had to make various compliances. Neither of the Petitioners have filed the affidavits in terms of the said order.

4. In *W.P.(C) 10683/2022*, the Court has been informed that the affidavit was filed on 21st July, 2023. However, the Respondent is stated to not have been served.

5. On behalf of the Petitioner in *W.P.(C) 10683/2022*, the affidavit has been filed on 21st July, 2023 and it seems that the same has come on record despite an objection by the Registry that the proof of service is not filed.

6. In *W.P.(C) 10867/2022*, the service is stated to have been made at email address sandeepmahapatra@gmail.com. Mr. Mahapatra, Id. Counsel submits that the correct email address has always been appearing on the index where he has been filing affidavits as sdeepmahapatra@gmail.com.

7. The clear impression that the Court gets is that the Petitioners are in complete non-compliance of the orders dated 12th April, 2023 and had filed

the affidavits without serving the Respondents properly so as to ensure that the hearing does not proceed before this Court.

8. Mr. Chetan Sharma, Id. ASG submits that approximately 4,000 more complaints have been received from consumers who are complaining about the service charges being imposed by the Petitioners and their members.

9. Accordingly, one last opportunity is granted to the Petitioners to properly file these affidavits within four days subject to payment of Rs.1,00,000/- as costs in each of the petitions which shall be paid to the **Pay and Accounts Office, Department of Consumer Affairs, New Delhi by way of a Demand Draft.** Without the cost being deposited, the affidavits shall not be taken on record.

10. The Respondents are permitted to file a response to the affidavits, if necessary, by 20th August, 2023 with advance copy to the Petitioner.

11. List this matter for further hearing on 5th September, 2023.

12. These are part-heard matters. Order *dasti*.

PRATHIBA M. SINGH, J.

JULY 24, 2023

dj/rp