

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/19/381  
( Date of Filing : 11 Oct 2019 )**

1. SANTHOSH MATHEW

[Redacted]

.....Complainant(s)

Versus

1. K.N BHASKARAN

SUSHEELA BAKERY [Redacted]

[Redacted]

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. D.B BINU PRESIDENT  
HON'BLE MR. RAMACHANDRAN .V MEMBER  
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

**PRESENT:**

**Dated : 30 Dec 2023**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

**Dated this the 29<sup>th</sup> day of December, 2023**

Filed on 11/10/2019

**PRESENT**

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

**C. C. No. 381/2019**

**COMPLAINANTATS**

- 1. Santhosh Mathew, [Redacted]
- 2. Suja, W/o Santhosh , [Redacted]
- 3. Nadan(minor) [Redacted]
- 4. Nidhy, [Redacted]

(Rep. by Adv. Tom Joseph, Court Road, Muvattupuzha 686661)

**Vs**

**Opposite party**

KN Bhaskaran Proprietor, Suseela Bakery , [REDACTED]  
[REDACTED]

(Rep. by Adv. P.T. Girish, F10, 1<sup>st</sup> Floor, KSBH Revenue Tower, Park Avenue Road, Cochin 682011)

**FINAL ORDER**

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

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

The complaint is lodged under Section 12 (1) of the Consumer Protection Act, 1986, The opposite party. On January 26, 2019, the complainants purchased bakery items, including pups, from the bakery. After consuming these items, they experienced symptoms like loose motion, abdominal pain, and vomiting, indicative of food poisoning. They sought medical treatment at MCS Hospital, Muvattupuzha. Despite informing the bakery owner, the complainants allege they received threats instead of an apology or compensation. The food safety and health authorities inspected the bakery, finding health hazards and imposing a Rs. 3000/- penalty for safety rule violations. The complainants claim to have suffered mental agony and financial losses due to this incident. They seek Rs. 50000/- in compensation for these hardships and the unsafe food, citing deficiency in service and unfair trade practices. The complaint includes a request for relief and the cost of the proceedings.

**2). Notice**

Notice was issued from the Commission to the opposite party. The opposite party received the notice and filed their version.

**3. THE VERSION OF THE OPPOSITE PARTY**

The allegations against the opposite party are legally and factually unsustainable. The bakery is acknowledged as being owned by the opposite party. However, the response challenges the accuracy of the claims regarding the purchase of bakery items, including the specified consumption date and the subsequent illness symptoms. The opposite party contests these allegations, stating that the ownership of M/s. Suseela Bakery and its operation as a bakery is confirmed. The response challenges the accuracy of the claims about purchasing bakery items, including the consumption date and subsequent illness symptoms. It's stated that the claim of food poisoning from the bakery's products is false. Allegations in the complaint are denied as false, exaggerated, and baseless. The opposite party denies causing mental, or financial harm, or

hardship to the complainant and supplying unsafe food. The opposite party asserts that the complainant is not entitled to any compensation or relief as claimed. The response concludes with a request for the commission to dismiss the complaint, suggesting that the opposite party should be awarded costs.

#### 4. **Evidence**

The complainant had produced 4 documents that were marked as Exhibits A-1 to A-4.

**Exhibit A1:** Copies of the outpatient records issued from MCS Hospital.

**Exhibit A2:** Copy of the reply received from the Medical Officer, PHC, Kalloorkadu.

**Exhibit A3:** Copy of the reply received from the Food Safety Inspector, Muvattupuzha.

**Exhibit A4 (series):** Copies of reply received from the Food Safety Inspector, Muvattupuzha, under the RTI Act, which includes evidence of a fine paid by the opposite party.

#### 5) **The main points to be analyzed 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 parties to the complainant?
  - iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

#### 6) **The issues mentioned above are considered together and are answered as follows:**

We have heard Sri. Tom Joseph, Learned Counsel for the Complainant. The complainant's argument focuses on the food poisoning incident allegedly caused by consuming pups from a bakery owned by the opposite party. They have submitted **Exhibits A1 to A4** to support their case. According to **Exhibit A1**, the complainants received medical treatment for food poisoning at MCS Hospital in Muvattupuzha on January 27, 2019.

Furthermore, the complainant points out that the food safety officer found various irregularities in the bakery, leading to penalties against the opposite party, as shown in **Exhibits A3 and A4**. Based on these documents, the complainant argues that the food poisoning was a direct result of unsafe food supplied by the opposite party. Consequently, they request that their complaint be accepted and acted upon.

## Top of Form

We listened to the arguments presented by Sri. P.T. Girish, the learned counsel representing the opposite party. The matter at hand concerns four complainants claiming to have experienced food poisoning after eating bakery products, specifically pups, from M/s. Suseela Bakery is located in Kalloorkadu.

The incident reportedly occurred on January 26, 2019, with symptoms including loose motion, abdominal pain, and vomiting. The complainants sought medical treatment the following evening at MCS Hospital in Muvattupuzha and subsequently filed a complaint with the food safety and health authority.

The opposite party, presumably the owner or representative of Suseela Bakery, has denied all allegations in a written statement. The complainants have submitted documents marked as Exhibit A1 to A4, but the opposite party claims to have no documents to present.

The defense's argument is that the complainants did not make M/s. Suseela Bakery a party in the complaint, rendering it not maintainable due to the non-joinder of a necessary party. Additionally, the complainants have not proven that the opposite party is the sole owner of Suseela Bakery, nor provided documentation to show that they purchased the pups from Suseela Bakery. The opposite party denies the specifics of the purchase and consumption of the bakery items on the alleged date and argues there is no lab report or evidence to prove that the food poisoning was caused by consuming pups from Suseela Bakery.

The defense finds it implausible that the complainants, especially with two minors among them, waited until the next day evening to seek medical attention. They also note that the food inspector who inspected the bakery on January 31, 2019, did not seize any decayed pups, indicating a lack of evidence of spoiled food. The opposite party suggests that the complainants' motive might be to extract money through false complaints and argues that since Suseela Bakery itself is not made a party to the complaint, the case should be dismissed.

In summary, the defense argues for the dismissal of the complaint on grounds of insufficient evidence, procedural flaws, and questionable credibility of the complainants' claims.

The complainants, lodged a complaint under Section 12 (1) of the Consumer Protection Act, 1986, against the opposite party, alleging that they suffered from food poisoning after consuming bakery items purchased from M/s. Suseela Bakery, Kalloorkadu, is owned by the opposite party.

The complainants claimed to have experienced symptoms such as loose motion, abdominal pain, and vomiting, indicative of food poisoning, after consuming the bakery items on January 26, 2019. They sought medical treatment at MCS Hospital, Muvattupuzha, and reported the incident to the food safety and health authorities.

The food safety authorities inspected M/s. Suseela Bakery and imposed a penalty of Rs. 3000/- for safety rule violations. The complainants alleged that they suffered mental agony and financial losses due to this incident and sought Rs. 50000/- in compensation for these hardships and the unsafe food, citing deficiency in service and unfair trade practices. Notice was duly issued to the opposite party, and they filed their version in response to the complaint.

In their response, the opposite party denied the allegations, challenging the accuracy of the claims regarding the purchase of bakery items, consumption date, and subsequent illness symptoms. They contended that the claim of food poisoning from their bakery's products is false and denied causing any mental, or financial harm, or hardship to the complainants. The opposite party asserted that the complainants were not entitled to any compensation or relief as claimed and requested the Commission to dismiss the complaint.

History of the physical examination of the doctor (**Exhibit A1**) clearly shows the consumption of pups by the complainants.

According to the reply received from the medical officer. (**Exhibit A2**), a field inspection was conducted at 1 PM on 30.01.2019 by the Junior Health Inspector of the Thazhavamkundu section on behalf of the Medical Officer, in response to the complaint you filed. During the inspection, deficiencies were observed and recorded, and a Public Health Notice was issued. You are also instructed to present the water test results and the cooks' health cards to the inspection officer within the specified time frame and to improve the cleanliness of the establishment's surroundings.

The pertinent excerpts from the letter (**Exhibit A2**) are presented below:

" 13/2019-ാം നമ്പർ പ്രകാരം താങ്കൾ നൽകിയ പരാതിയിൻമേൽ 30.01.2019 ന് 1 മണിയ്ക്ക് മെഡിക്കൽ ഓഫീസർക്കു വേണ്ടി തഴവംകുന്ന് സെക്ഷനിലെ ജൂനിയർ ഹെൽത്ത് ഇൻസ്പെക്ടർ സ്ഥല പരിശോധന നടത്തിയിട്ടുള്ളതാണ്. പരിശോധനാസമയത്ത് നേരിൽ കണ്ട് ബോധ്യപ്പെട്ട പോരായ്മകൾ രേഖപ്പെടുത്തി പബ്ലിക് ഹെൽത്ത് നോട്ടീസ് നൽകുകയും സമയപരിധിയ്ക്കുള്ളിൽ വാട്ടർ ടെസ്റ്റ് റിസൾട്ട്, പാചകക്കാരുടെ ഹെൽത്ത് കാർഡ് എന്നിവ പരിശോധനാഉദ്യോഗസ്ഥനു മുൻപിൽ ഹാജരാക്കുവാനും സ്ഥാപനത്തിന്റെ പരിസരശുചിത്വം മെച്ചപ്പെടുത്തുവാനും നിർദ്ദേശിച്ചിട്ടുള്ളതുമാണ്. "

The response obtained through the Right to Information (RTI) Act from the Assistant Food Safety Officer referenced as **Exhibit A3**, is presented as follows:

“നടപടി എടുത്തിട്ടുണ്ട് കടപരിശോധിച്ചു ന്യൂനതകൾ പരിഹരിക്കുന്നതിനായി മഹസ്റ്റർ നോട്ടീസ് നൽകി.

(3)

A ) fssai License പരിശോധനാ സമയത്ത് ഹാജരാക്കിയില്ല.

(6) ന്യൂസ് പേപ്പർ കൊണ്ട് ഭക്ഷ്യ വസ്തുക്കൾ കവർ ചെയ്യാൻ ഉപയോഗിക്കുന്നതായി കാണപ്പെട്ടു.

(6) ഭക്ഷ്യ വസ്തുക്കൾ തുറന്ന് മാറാലയും. എട്ടുകാലിയും ഉള്ള സ്ഥലത്ത് സൂക്ഷിച്ചിരിക്കുന്നു

(D) പ്രാണികൾ ഉള്ള ബ്രോക്കൺ ന്സ് സ്റ്റോർ റൂമിൽ നിന്നും കണ്ടെടുത്തു.

(4) ന്യൂനതകൾ കണ്ടതിന്റെ അടിസ്ഥാനത്തിൽ അസിസ്റ്റന്റർ ഫുഡ് സേഫ്റ്റി കമ്മീഷണർ 3000/ രൂപ പിഴ നിശ്ചയിച്ചു നോട്ടീസ് നൽകിയിട്ടുള്ളതാണ്. “

The document referred to as **Exhibit A3**, unequivocally demonstrates the unhygienic state of an unlicensed food stall, summarised as follows:

Action has been taken. The stall was inspected, and a notice was issued to address the identified deficiencies. During the inspection, the following observations were made:

- a. The stall did not present an FSSAI license at the time of inspection.
- b. Food items were found covered with newspaper, which is an unhygienic practice.
- c. Food items were stored openly in areas with insects and rats.
- d. Broken nuts were found in a storage room with animals.
- e. Based on these deficiencies, the Assistant Food Safety Officer imposed a fine of INR 3000 and issued a notice.

The document identified as **Exhibit A4**, together with the Mahassar, outlines the measures implemented by the Assistant Food Safety Officer concerning the shop under scrutiny, notably the enforcement of a fine of INR 3000. The content of these documents and their factual assertions have not been contested by the opposite party. Additionally, no evidence has been presented to challenge or question the truthfulness and credibility of the affidavit submitted by the complainant.

**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."**

The complainants submitted four documents marked as **Exhibits A-1 to A-4** in support of their case. **Exhibit A1** consisted of outpatient records from MCS Hospital, **Exhibit A2** included a reply from the Medical Officer, PHC, Kallorkadu, **Exhibit A3** contained a reply from the Food Safety Inspector, Muvattupuzha, and **Exhibit A4** comprised copies of replies received from the Food Safety Inspector, Muvattupuzha, under the RTI Act, which included evidence of a fine paid by the opposite party.

The main issues to be analyzed in this case are as follows:

**i) Maintainability of the Complaint:**

The opposite party argues that the complaint is not maintainable due to the non-joinder of a necessary party, i.e., M/s. Suseela Bakery. However, we find that the complainants have identified the bakery as owned by the opposite party, [Mr.KN Bhaskaran]. Furthermore, the Défense's contention that the complainants did not make M/s. Suseela Bakery a party is not tenable, as the complaint identifies the owner of the bakery, which is the opposite party.

The argument of the opposite party questioning the credibility of the complainants is noted but not found convincing in light of the documentary evidence provided.

The complaint appears maintainable before the commission for several reasons. **Exhibit A3** demonstrates the unhygienic state of an unlicensed food stall, providing concrete evidence supporting the complaint. According to **Exhibit A2**, a field inspection was conducted by the Junior Health Inspector, confirming deficiencies and leading to a Public Health Notice. Instructions to present water test results and cooks' health cards, and to improve cleanliness, indicate that the authorities are taking action based on the complaint. **Exhibit A1**, detailing a physical examination by a doctor, suggests that the complainants suffered health issues related to the food from the stall. **Exhibit A4**, along with the Mahassar, shows that the Assistant Food Safety Officer imposed a fine on the establishment, indicating recognition of the issue. Additionally, the absence of any contestation or evidence against the credibility of the complainant's affidavit and other documents by the opposite party strengthens the maintainability of the complaint.

## ii) Deficiency in Service and Unfair Trade Practices:

- The complainants have provided medical records (Exhibit A1) indicating that they sought treatment for food poisoning after consuming bakery items from M/s. Suseela Bakery. Additionally, **Exhibits A3 and A4** reveal that the food safety authorities imposed a penalty on the opposite party for safety rule violations. This evidence suggests that there may have been a deficiency in service and potential unfair trade practices on the part of the opposite party in supplying unsafe food. The evidence provided, particularly **Exhibits A1 to A4**, clearly indicates a deficiency in service and negligence on the part of the opposite party. The medical reports and the findings of the food safety inspector substantiate the claim of food poisoning.

## iii) Entitlement to Relief and Costs of the Proceedings:

The complainants claim to have suffered mental agony and financial losses due to the food poisoning incident. While the evidence does establish a link between their illness and the consumption of bakery items, further investigation may be necessary to determine the extent of their losses and the causal connection with the opposite party's actions.

- A. Definition of Deficiency in Service:** The Act defines "deficiency" as any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance required to be maintained by or under any law in force or undertaken to be performed by a person in pursuance of a contract or otherwise about any service. Food poisoning cases often fall under this definition when the food sold is not of the standard that is legally or contractually required.
- B. Unfair Trade Practice:** Selling goods hazardous to life and safety, when used, is considered an unfair trade practice under the Act. If food safety standards are not met, leading to food poisoning, it can be construed as an unfair trade practice.
- C. Food Safety and the Indian Constitution: Right to Life:** Article 21 of the Indian Constitution guarantees the right to life. The Supreme Court of India has interpreted this right broadly to include the right to live with human dignity, which encompasses health and safety aspects. Therefore, the right to safe and healthy food can be derived as a part of the right to life.
- D. Liability of the Opposite Party:**

In light of the above observations and the legal principles, we find that there is a prima facie case of deficiency in service and potential unfair trade practices on the part of the opposite party in supplying unsafe food. Therefore, the opposite party is liable to respond to the allegations raised in the complaint.

*Every morning, we are reminded to "Wake up, consumer wake up," but the awakened consumer often finds themselves in the dark. Thankfully, central state governments and our legal systems have established various mechanisms to help guide these awakened consumers out of the darkness. The true awakened consumer is someone who effectively utilizes these systems, and the complainant and their family serve as outstanding examples. The Commission deeply appreciates individuals like them who don't merely point out flaws in existing legal systems but instead discover the limitless potential of the consumer protection laws and the RTI Act. They use this knowledge to obtain essential documents, approach the Commission, and persist until a final verdict is reached in their legal battle. The Commission extends its sincere appreciation to the complainant and their family, recognizing the significant efforts they have made to seek justice for their legitimate rights. Their actions set a commendable example for other consumers facing issues related to deficient service and unfair trade practices perpetrated by unscrupulous traders.*

We find that issues (I) to (IV) are decided in favor 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 the 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 the opposite party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall pay ₹30,000/- (Thirty Thousand Rupees) as compensation for their deficiency in service and unfair trade practices. This amount also covers the mental agony, physical hardship, and damages, including inconvenience, caused to the complainant due to the Opposite Party's supply of unsafe food.
- II. The Opposite Party shall also pay the complainant ₹20,000/- (Twenty Thousand Rupees) towards the cost of the proceedings.

The 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 (11.10.2019) until the date of payment.

Pronounced in the Open Commission on this the 29<sup>th</sup> day of December, 2023

Sd/-

D.B.Binu, President



Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Assistant Registrar

## **APPENDIX**

### **Complainant's evidence**

**Exhibit A1:** Copies of the outpatient records issued from MCS Hospital.

**Exhibit A2:** Copy of the reply received from the Medical Officer, PHC, Kalluorkadu.

**Exhibit A3:** Copy of the reply received from the Food Safety Inspector, Muvattupuzha.

**Exhibit A4 (series):** Copies of reply received from the Food Safety Inspector, Muvattupuzha, under the RTI Act, which includes evidence of a fine paid by the opposite party

### **Opposite party's evidence**

Nil

kp/

Despatch date:

By hand:

by post:

**C.C. No. 381/2019**

**Order date: 29/12/2023**

**[HON'BLE MR. D.B BINU]  
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]  
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]  
MEMBER**