

DCDRCC / 1127-1129 Dated 04/11/24

Before the District Consumer Dispute Redressal Commission [Central District] - VIII,
5th Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi
Complaint Case No. 131/11.09.2023



✓ Raminder Kaur d/o Mr. Davender Singh
G-3, 8/149, Sector 3 Rajendra Nagar,
Sahibabad Ghaziabad, UP - 201005
Email: advocateraminderkaur@gmail.com

...Complainant

Versus

OP - Halidiram's
11 Pusa Road, Block-17A,
WEA Karol Bagh, New Delhi-110005.

...Opposite Party

Coram:
Shri Inder Jeet Singh, President
Ms Rashmi Bansal, Member -Female

Date of filing: 11.09.2023
Date of Order: 04.11.2024

FINAL ORDER

Inder Jeet Singh, President

It is scheduled today for order (item no.3)

1.1. (Introduction to dispute) – the complainant has grievances of illegal and unfair trade practice of charging extra packing charges by the OP, who has its own retail chain stores and a range of restaurant in Pune, Raipur, Kolkata, Noida and Delhi. The complainant was also levied Rs. 40/- as packing charges against norms, rules in respect of food article delivered against bill. That is why the complainant is seeking appropriate directions to OP to (i) stop their illegal and unfair trade practice of charging extra as packing charges with immediate effect; (ii) to refund Rs.40/- along-with interest @ of 24% p.a. till date which was wrongly charged; (iii) to pay costs of Rs.21,000/-; (iv) impose punitive damages on the for deficiency in their services and wrongful gain of money and impose exemplary costs on the OP as a deterrent against such unfair trading activities in future besides (v) other appropriate relief.

1.2 The OP was served with notice on complaint on 21.09.2023 but it failed to file written statement within time, consequently the opportunity was treated as availed and closed on 06.11.2019. Then complainant led evidence.



1.3. It is relevant to mention that the present complaint u/s 15 of the Consumer Protection Act, 2019 is blend of facts, figures, reference of documentary records, notifications by Central Consumer Protection Authority, legal provisions and case law in support that packing charges levied by OP were wrong and to press that there is unfair trade practice of packing charging.

2.1. (Case of complainant) - On 02.09.2023 around 1pm the complainant placed an online order at Haldiram's through Swiggy platform. After, the food was delivered to the complainant and she glanced at the bill attached with the delivered food item, she was surprised to see that an additional amount of Rs. 40/- was charged as packing charges. The complainant realized that she was wrongly charged for packing charges (of food items) by the OP. The OP is indulging in unfair trade practice by charging extra amount as packing charges, in comparison to what one would normally pays for the food items at a restaurant counter, the consumer is being compelled to pay extra charges under different heads for the same orders online. The complainant believes that by additionally including operating expenses to the bill is unfair trade practice. [The complainant also refers the legal provision of the Consumer Protection Act, 2019 and also rules as a ready reference to highlight the norms to be followed vis-à-vis breached by the OP].

2.2. That the Consumer Affairs Department, Government of India, has directed, and clarified that the price of the product or the service must include all operating costs involved in the making and the delivery of the product/services. Despite it, online traders and many others continue to resort to unfair trade practices {UTP}, adding illegal and operating costs to the bill separately over and above the price of the product displayed online. Moreover, in notification of 21st April 2017 (No. J-24/9/2014-CPU), the Ministry of Consumer Affairs, Food and Public Distribution-Department of Consumer Affairs (<https://consumeraffairs.nic.in/>) clearly mandates (i) A component of service is inherent in provision of the food and beverages ordered by a customer. Pricing of the product, therefore, is expected to cover both the good and service components. (ii) Placing an order by a customer amounts to his/her agreement to pay the prices displayed



on the menu card along with the applicable taxes. Charging anything other than the aforementioned, without express consent of the customers, would amount to unfair trade practice as defined under the Act." Therefore, this notification has put every argument of overhead charges to a rest, whether for an aggregator, delivery agent, restaurant or hotel.

If one were to avail 'take away' option of the same food, the order will be packed in the same manner just as it was deemed to have been ordered through online sources. The restaurant does not charge a single dime over and above the actual amount in take away options when one goes in person and collects the food parcel. The customers are not to be burdened with any extra packing charges vis a vis the packing standards are same in both scenarios. Further, sub-section (5) of section 36 of the Sale of Goods Act, 1930 is abundantly clear that unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller. Thus, under this provision of law, all the expenses with regard to packing etc. shall be borne by the vendor in order to putting the goods into deliverable state.

If a restaurant charges a packing fee, then it should also offer a discount since (a) man-hours are saved in attending to the customer if he were physically present at the restaurant, (b) direct expenses are saved like detergent for washing the utensils besides tissue paper, cutlery usage, table occupancy etc. All these expenses are saved which the restaurant can spend on another customer and (c) saving of indirect expense of electricity cost, rental charges, etc. The customer does not use any of these while ordering food using online mode. Further, packing is a necessity in order to make delivery of food. But by charging packing fee is like charging for a plate and glass rental when restaurant has an in-store customer.

2.3. It is further stated that the concept of such packing charges has always been unfair and illegal. The notification by the Consumer Affairs Department in April 2017 has already confirmed that the price of the product/service is expected to have all operating expenses and the profit margins included in it. The containers used for packaging the



items cost next to nothing to the restaurants, who buy them in bulk but they are fleecing customers by charging 30-40 times more than what it costs them. It is extremely unfair to impose more burden on consumers in a clear departure from the well-settled principles of consumer protection; the consumers form an integral part of a market driven economy, therefore, the consumers deserve to be treated with honesty and sincerity by the sellers. Usually, consumers end up paying more money than warranted because of want of understanding the legal rationale and logic behind these unfair practices. It is creating an environment of unfair trade practices for consumers by adding unnecessary heads to the bill over and above the price of the product, including legally allowed taxes; this is exploitation of consumer. The Consumer Courts have passed a number of orders against such unfair and illegal practices carried by the restaurants/food chains, wherein they charged extra from the consumers as packing charges, some of them are -

(i) Vijay Gopal v KFC Restaurant (CC/412/2019), Hyderabad Consumer Dispute Redressal Commission held that the collection of any other charges than the price of the product/service as illegal and unfair trade practice and ordered KFC to pay Rs.50,000/- as punitive damages and Rs 10,000/- as compensation to the consumer for charging Rs.33/- as packing fee.

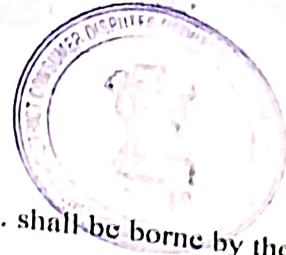
(ii) Pankaj Chandgothia vs Dominos (CC/204/2018) - District Commission, Chandigarh, held that "the opposite party has no right to recover the expenses borne by it on the packing of the goods or putting the goods in a deliverable state," and ordered the OP to refund the packing charges and pay Rs.2,500/- to the Complainant as compensation for mental agony.

(iii) The decision (ii) above was upheld in Appeal No.160 of 2019 by Chandigarh State Commission while holding, "the Commission is of the view that each seller is obliged to deliver the goods in the complete state of delivery. (para 13) -The delivery of goods means physically handing over the goods from buyer to seller in a complete deliverable state. The goods can be delivered straight when these are fully packed as per the nature and environment affecting the goods. (para 14) - The packing of goods is also a state in putting the goods in the deliverable state. If you want to buy biscuits or bread, those should not be given in open and rather should be packed in such a manner, to save them from external atmosphere. (para 15) All kinds of expenses incurred in order to putting goods into a deliverable state shall be suffered by the seller. If not out of place to refer here the provisions of sub-section (5) of section 36 of the Sale of Goods Act, 1930 which makes it absolutely clear that unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller. Thus, under this

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provision of law, all the expenses with regard to packing etc. shall be borne by the vendor in order to putting the goods into a deliverable state."

(iv) Heman Aggarwal v Hot Millions Restaurants (CC/76/2019)- Chandigarh State Commission directed Panchkula's Hot Millions to pay Rs.2,500/- to the complainant Heman Aggarwal and also refund of Rs.5/- along-with interest at 9% per annum from the date of filing of complaint till realisation against charging packing charges on food delivery.

(v) Pancy Singh v Hardyz Burger (2022), DCDR Commission Mohali , it penalised an eatery restaurant Hardyz Burger and asked them to pay Rs.15,500 for collecting Rs. 10/- extra as packing charges. The Commission also held that OP definitely falls within the purview of "deficiency in service" and that by demanding packaging charges, it has been collecting a huge amount from thousands of customers, and must have collected lakhs..

(vi) Rishabh Wadera v M/s McDonald's Restaurant (FA/132/2022), the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh reaffirmed the order passed by District Commission that "all the expenses with regard to packing, providing carry bags etc. shall be borne by the vendor in order to put the goods into a deliverable state. The Ld. Lower Commission while placing reliance on the judgment of this Commission in FA No.238 of 2019 Big Bazaar (Future Retail Ltd.) Vs Ashok Kumar (supra) held that the respondents committed unfair trade practice by charging Rs.35/- towards packing charges. The Ld. Lower Commission rightly ordered refund of Rs.35/- on account of packing charges, besides compensation of Rs. 500/- and litigation costs to the tune of Rs. 1100/-, which appears to be justified and adequate".

2.4. The OP is violated the those principles in the present case and it is liable to pay compensation to the complainant. In fact the OP is taking advantage of lack of awareness of the consumer and the complainant being one of the aggrieved persons filed the present complaint, also as social responsibility. The OP is a leading multi-millionaire brand, which claims to generate revenue over Rs.7000 crores but despite it, it has indulged in unfair trade practice as charging or high rate as packing charges, there is violation of law, guidelines, norms etc, for which they are accountable including for compensation. That is why the present complaint for the reliefs being sought.

2.5. The complaint is accompanied with documents/copies of – bill dated 02.09.2023, notification dated 21.04.2017 and identity proof of the complaint.



3 (Evidence)- In order to prove the complaint, the complainant Ms. Raminder Kaur led her evidence by filing detailed affidavit of evidence with the support of documents filed with the complaint.

4.1 (Final hearing)- The complainant filed written arguments followed by oral submission by Ms Priti Agarwal Advocate with complainant. The complainant also relied upon:-

(vi) Nitin Mittal Vs Pnd Balluchi Restaurant RP No.1999/2012 dated 01.08.2012 (NC) (para 5) held that it must be borne in mind that there has to be some difference in price in respect of food served in the restaurant itself and packed food. For the food which is served in the restaurant itself, the owner of restaurant has to incur money for furniture, carpets, Air conditioners, fans, waiters, cleaning, moping and dusting the restaurant, maintenance of reception etc.; for packed food, there is no need to give such like services. The complainant has made a vain attempt to make the bricks without straw. For as below have nowhere missed the wood for tree. We add our voice to theirs and dismiss the revision petition.

4.2. As already stated, the OP had joined the proceedings and also filed the written arguments to the limited extent (because of want of defense version and without putting defense evidence), Shri Gautam Harshwal Advocate also presented the oral submission that even on the face of record and evidence, it does not make out case of unfair trade practice against the OP.

4.3. Now, Ld. Counsel for complainant with complainant requests by browsing online online platform, it would not show the breakup of bill but glimpses of total bill amount and in the absence showing breakup of bill, levying packing charging therein by seeking total bill amount is unfair trade practice. It cannot be construed consent to pay such packing charges. The OP could not charge packing charges. The OP was required to show completely all the breakup of the bill, thereafter only the complainant or other customer will be able to decide to go or not for order.

5.1 (Findings)- The complainant
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5.1 (Findings)- The case of complainant is considered, analyzed and assessed keeping in view the material on record, the provision of Consumer Protection Act, 2019, the Rules framed there-under, the notification dated 21.04.2017 (guidelines No. 1 & 2) and also further notification F.No. J-25/57/2022-CCPA dated 04.07.2022- Central Consumer Protection Authority, (its regulation No. 4 particularly) and the case law presented.

5.2 After taking into account stock of all such materials, the following conclusions are drawn :

(i) The complainant has proved subject bill (Exh.CW 1/1) delivered with food article, it shows order packing charges Rs. 40/- were charged from the complainant in online order.

(ii) The guidance no. 1 & 2 of notification dated 21.04.2017 mentions that the price of goods covers both the goods and service component and charging any other amount without express consent, it would amount to unfair trade practice as defined under the Act. Further, the notification dated 04.07.2022 also regulates that the hotel and restaurant have option to offer food or beverages to the consumer at the prices and placing an order involves consent to pay the prices of food items displayed in the menu alongwith the payable taxes, charging anything other than the said amount would tantamount to unfair trade practice under the Act.

In the present situation in hand, as demonstrated, after online order, the bill just shows total amount of bill payable for the order placed without showing breakup detail or of order packing charges of Rs. 40/-, such detail was hidden, however after the food article alongwith the bill is delivered, than it discloses the breakup of the bill inclusive of order packing charges. When the online order was placed and there was no breakup of bill detail was given, how complainant would give consent for the order packing charges of Rs. 40/-? (in other word if the consent was given for total bill of Rs. 269/- as the amount was showing online at the time of order, it would not construe consent for order packing charges, which were hidden at the time of online order nor it would be subsequent consent when the detail of bill is disclosed at the time of delivery of food article with the bill breakup).

(iii) By reading the conclusion in sub clause (i) to (ii) above, it is crystal that when complainant had placed online order, the total bill was of Rs.269/- without other details or breakup, it was hidden. However, when the food article with the bill was delivered, the breakup of bill was mentioned inclusive of order packing charges.

(iv) There is another off-shoot, whether order packing charges are optional? Order packing charging has not been shown optional and as appearing, there was no option with the complainant to exercise for choice of any breakup in the bill since total bill amount



was shown without breakup. The packing charges of Rs. 40/- charged from the OP is unfair trade practice as well as violation of guidelines mentioned in the notification or Regulation in the subsequent notification.

(v) The complainant has discharged her onus in proving the allegations of levying of packaging charges of Rs.40/- and the testimony of the complainant remained unchallenged and un-rebutted.

In view of the above, it is held that complainant has succeeded to establish the complaint against OP that there is unfair trade practice. Therefore, the complainant is held entitled for refund of amount Rs. 40/- which was charged by the OP as order packing charges, the same were levied by the OP in the bill without disclosing in advance to the complainant and also in violation of rules, norms etc.

5.3.1 The complainant requests to impose of punitive damages since OP has indulged in wrongful gain and also to impose exemplary cost besides to award cost of litigation of Rs. 21,000/- but all of them have been opposed by the OP for want of proof of allegations as well as no such amount is payable. It needs to assess the record.

5.3.2 Since, the complainant claims punitive damages against OP, Is it a fit case to award punitive damages?.

Firstly, what is punitive damages? What is its purpose? The Punitive damages (exemplary damages) are assessed and awarded in order to pinch respondent for outrageous/intolerant behaviour and/or to refrain it or to deter others from engaging in conduct similar to that which formed basis of law suit. Punitive damages are also imposed to reform defaulting party as well as to deter other from indulging in such wrongs. Punitive damages are generally given in civil action, however, there is also law in proviso to section 39(1)(d) the Consumer Protection Act, 2019 for punitive damages. The punitive damages are not fine or penalty as fine is imposed in criminal trials.

It requires appraisal of material, documents and evidence on record. As per their records the OP is a leading multi-millionaire brand, which claims to generate revenue over Rs.7000 crores and it is serving large number of customers. To say it is undisputed that the OP is a professional in the field of restaurant and retail chain. It would be



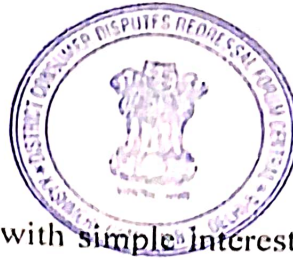
Following the norms and it is also knowing as to how platform has been arranged to deal with the variety of orders, billings including packing charges. The circumstance are also showing that total bill amount is demonstrated to the customers but its detail consisting of packing charges etc are kept hidden. Thus it cannot be considered consent of customer for such packing charges. It needs to be dealt in a manner so that it proves to be a deterrent and OP may not repeat them again. Therefore by deriving the reasons from the record, it is held, it is fit case to award punitive damages.

Another question is for quantification of damages. The damages should be to the extent that it may actually pinch the defaulter, therefore, by deriving reasons for case law mentioned on behalf of complainant, the punitive damages are quantified as Rs.50,000/- out of which Rs.40,000/- shall be deposited with State Consumer Welfare Funds Delhi (no. 00000010310544717, IFSC Code SBIN0001187, MICR Code 110002049) within 45 days of this final order and remaining Rs.10,000/- shall be payable to the complainant.

5.3.3. The complainant has also requested for exemplary cost, however in view of findings given in paragraph 5.3.1 above, it does not require separate direction for exemplary cost.

5.3.4 The complainant also seeks litigation cost of Rs. 21,000/-. Although the situation for filing the present complaint emerges on the eve of charging Rs. 40/ by the OP as packing charges contrary to norms and rules besides without disclosing to the complainant, the complainant was constraint to file the present complaint. In order to file the present complaint under the Consumer Protection Act, the procedure prescribed is to be followed irrespective of amount involved. The complainant deserves the cost, the same is determined as Rs. 5,000/- and costs of Rs.5,000/- is allowed in favour of complainant against OP. The interest is also allowed of 9% per annum on amount of Rs. 40/- from the date of complaint till realization of the amount.

6. Accordingly, the complaint is allowed in favour of complainant and against the OP while directing OP(i) to immediately discontinue unfair trade practice of levying packing charging under any nomenclature and not to repeat it, (ii) to



refund packing charges of Rs.40/- along-with simple interest of 9% p.a. from date of payment till realization of amount to the complainant, (iii) punitive damages Rs.10,000/- to the complainant & (iv) costs of Rs.5,000/- to the complainant and (v) apart from depositing punitive damages of Rs.40,000/- in the Delhi State Consumer Welfare Fund (its receipt will be furnished to this Commission in time), payable (and to be deposited) within 45 days from the date of this order .

In case the amount is not paid within 45 days of receipt of this Order, then interest rate will be 10%pa on the amount of Rs.40/-(in place of 9%pa). The OP is at liberty to deposit the amount (which is payable to the complainant) with the Registry of this Commission by way of valid instrument in the name of the complainant. In order to clarify, it needs to add, that Principal officer of OP, by whatever designation, will be responsible for compliances of directions/order or other directions on day to day basis as well as for legal consequences of non-compliances of such directions.

7. Announced on this 4th day of November 2024 [कार्तिक 13, साका 1946].. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliances, besides to upload on the website of this Commission. A copy be also sent to Delhi State Consume Welfare Fund for appropriate information and action as per rules.

CERTIFIED TRUE COPY (FREE COPY)

Registrar/Examiner
District Consumer Dispute Redressal Commission (Central)
Organized under Regulation 21 of C.P. (C.C.P.) Regulation 2020

[Rashmi/Bansal]
Member (Female)

[Inder Jeet Singh]
President

[ijs131]