

BEFORE:

HON'BLE MR. Swapan Kumar Mahanty PRESIDENT
HON'BLE MR. Ashoke Kumar Ganguly MEMBER

PRESENT: Sunil Kumar Gupta, Advocate for the Complainant 1

Dated : 07 Jan 2022

Final Order / Judgement
FINAL ORDER/JUDGEMENT

SHRI SWAPAN KUMAR MAHANTY, PRESIDENT

This is an application u/s.12 of the C.P. Act, 1986.

The brief facts of the case are that the complainant and his friends had been to OP-1 Restaurant located at 5th floor, Quest Mall, 33 Syed Ahmed Ali Avenue Kolkata-700017 for enjoying appetizing food considering its brand name. The food supplied by the OP-1/Restaurant is poor quality and the behavior of restaurant boys were out lendish. The OP-1 issued invoice amounting to Rs. 3,085/- excluding 10 % service charges though the complainant insisted for not including 10 % service charge over the invoiced amount Service charge is not mandatory and it is up to the consumer either to pay or refute such service charges subject to his satisfaction with the services of the Restaurant. To avoid any confrontation and consequence embarrassment, complainant was compelled to pay an amount of Rs. 3,563/- (inclusive of Rs. 308/- towards service charges) under protest. The OP-1 must have aware of the guideline of Fair Trade Practice related to charging of the service charge from the customers by hotel/restaurants

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issued by the Department of Consumer Affairs, Government of India inter alia stipulating that service charge on hotel and restaurant and bill is "totally voluntarily" and not mandatory moreover, said guidelines further stipulated that any deviation thereof would amount to unfair trade practice and will be sternly dealt with by the Appropriate Authority. Complainant vide legal notice dated 29.05.2019 requested the OP-1 to tender their apology in appropriate form and further asked to pay compensation to the tune of Rs. 25,000/- within 15 days from the date of receipt thereof but such notice was unattended. Finding no other alternative, the complainant has filed the instant consumer complaint against the OPs.

OPs were duly served the complaint. However, despite service of notices no WV is filed.

Complainant Arkadeep Sarkar has filed his evidence by way of affidavit which has been taken on record.

Heard the Ld. Advocate for the complainant and perused the record. The main argument of the Ld. Advocate for the complainant is that the OP-1/Restaurant issued invoice of Rs. 3,563/- inclusive of Rs. 308/- towards services charges. Despite request, the OP-1 did not refund the service charge amount. The complainant was compelled to paid Rs. 3,563/-. Photocopy of Tax Invoice fully corroborated the evidence of the complainant. The OPs must have been aware of the guidelines of Fair Trade Practice related to changing of service charge from the consumers by hotels/restaurant issued by Department of Consumer Affairs, Government of India, inter alia, stipulating that service charge on hotel and restaurant bill is "totally voluntarily" and not mandatory. Photocopy of legal notice dated 29.05.2019 speaks that complainant requested the OPs to tender their apology in appropriate form and further asked to pay compensation to the tune of Rs. 25,000/- within 15 day from the date of receipt thereof. But such notice was unattended. Therefore, we are of the view that the conduct of the OP-1 is illegal malafide and contrary to the principles of law as stipulated under the Consumer Protection Act and the OP-1 deliberately failed and/or neglected to ameliorate the grievance of the complainant. Complainant is a consumer within the meaning of Consumer Protection Act and also availed the services from the OP-1. The OP-1 has committed unfair trade practice towards the complainant. The evidence of the complainant is remain unchallenged. There is absolutely no evidence on the part of the OPs to rebut the allegation of the complainant.

In view of the above discussion, the complaint is allowed with following directions:-

1. OP-1 Yauatcha-Kolkata is directed to refund Rs. 308/- as service charge over the invoiced amount of Rs. 3,085/- the only to the complainant within 30 days from the date of order.
2. OP-1 Yauatcha-Kolkata is also directed to pay Rs. 10,000/- as compensation for mental agony and harassment to the complainant within the specified period.
3. OP -1 is further directed to pay a sum of Rs. 3,000/- as litigation cost the complainant within the specified period.

With these directions the present consumer complaint stands disposed off.