

Vs

Sunil Wine Shop

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION KANGRA AT DHARAMSHALA HP.**

Date of Institution: 27.06.2023

Date of Final Hearing: 08.09.2023

Date of Pronouncement: 08.09.2023

Consumer Complaint No. 185/2023

IN THE MATTER OF:

Tarun Chaurasia R/o-C/o Narinder Singh Kanwar Colony behind Sajjan Hotel Upper Barol, P.O. Dari, Dharamshala District Kangra, H.P. 176057

(Through: Ms. Aashima Kalra, Advocate)

.....Complainant

Versus

Sunil Wine Shop, through its Proprietor Unit No. 2, L2 Kandi, Khaniyara, Dharamshala, Distt. Kangra, H.P. 176218.

(Through: Mr. R.K. Azad Advocate)

.....Opposite Party

CORAM:

President: Mr. Hemanshu Mishra

Members: Ms. Arti Sood & Sh. Narayan Thakur

Present:-

Ms. Ashima, Advocate Ld. counsel for the complainant.

Sh. R.K. Azad, Advocate Ld. counsel for opposite party.

PER: Mr. Hemanshu Mishra, President:-

ORDER

The complainant has filed instant complaint seeking following reliefs:-

- a. Declare the act of selling the product above the MRP by the opposite party as a violation of consumer rights under the Consumer Protection Act, 2019.
- b. Direct the opposite party to refund the excess amount charged to the complainant.

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- c. Direct the opposite party to pay the cost of litigation of INR 20,000/-
- d. Direct the opposite party to pay compensation to an amount of INR 25,000/- for the financial loss and mental distress caused.
- e. Impose suitable penalties and punitive measures on the opposite party to deter similar unfair trade practices in future.
- f. Direct the opposite party to discontinue the unfair trade practice or restrictive trade practice and not to repeat them.

2. Brief facts giving rise to the present complaint are that the complainant purchased the products from the opposite party. The opposite party sold the beer bottles and whisky bottle at a price exceeding the maximum retail price as mentioned as below:-

Date of Purchase	Description of the product	Q	Price paid per piece	Total amount paid	UPI payment Ref No.	MRP written on the product	Total amount due (as per MRP)	Excess charged
19.05.2023	King Fisher Ultra Pint	8	130	1040	13916336769	85	680	360
19.05.2023	Tuborg 1 Letre	1	180	180		180	180	0
19.05.2023	Budwiser-Beer	4	230	920	350515122499	225	900	20
19.05.2023	Whisky-Blender Pride (500ml)	1	500	500		480	480	20
Grand Total				2640			2240	400

Per complainant the excess charging above Maximum Retail price is a direct violation of the rights conferred upon the consumer and due to this the complainant has suffered both financial loss and mental distress due to the unfair and unethical business practices of the opposite party, the complainant has preferred the present complaint.

3. Notice was sent to opposite party by this Commission, which was duly served. The opposite party appeared through counsel but failed to file the reply within stipulated time, therefore, the right to file the reply on behalf of opposite party was struck off vide order dated 17.08.2023.

4. The complainant was called upon to produce evidence. In order to prove his complaint, complainant has filed affidavit Ext.CW-1 along with annexure(s) A to Annexure D and closed the evidence.

5. On the other hand, opposite party did not file the reply to the complaint within stipulated time, therefore, the right to file the reply on behalf of opposite party was struck off vide order dated 17.08.2023.

6. We have heard the learned counsel for the complainant and gone through the written arguments filed by the opposite party and also gone through the case file carefully.

7. The perusal of record reveal that payment for purchasing beer bottles and whisky were made through Google payment mode, unrebutted and unchallenged affidavit of complainant had specifically stated that for 8 Bottles of Kingfisher Ultra were charged Rs.130/- per bottle whereas MRP was Rs.85/- . On the same line Four bottles of Budweiser beer were charged for Rs.230/- whereas MRP was Rs.225/- and one bottle of Blender pride whisky was charged Rs.500/- whereas MRP was Rs.480/-. The

receipts annexed as Annexure 'A' substantiate the contentions of complainant. We have also gone through the legal notice Annexure 'C' and reply preferred by opposite party to the said legal notice Annexure 'D'. Ld. Counsel for opposite party had also produced receipt of the penalty imposed by the assistant Controller, Legal Metrology, (Weights & Measurements) department Dharamshala. The opposite party has paid the said penalty on 14th July 2023 to the tune of Rs. 5000/-. The opposite party has failed to file the reply to the present consumer complaint within stipulated time, therefore, the right to file the reply on behalf of opposite party was struck off vide order dated 17.08.2023.

8. The consumer has valuable consumer rights under section 2 (9) (ii and iii) which are as under ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against the unfair trade practices; iii) the right to be assured, where ever possible, access to a variety of goods, products or services at competitive prices;. The State of Himachal Pradesh has formulated an Excise policy and As per THE EXCISE POLICY 2023-24 of department of state taxes and excise HIMACHAL PRADESH and approved by the CMM on dated 06-03-2023 vide govt. letter no.exnf(1)/1/2023 dated 07-03-2023 the norms for selling of liquor bottles has been streamlined. Similarly the Legal Metrology Act is enacted with an objective of governing weights and measures, trade and commerce. It is also necessary to refer the

provisions of the Legal Metrology (Packaged Commodities) Rules 2011 as well as THE EXCISE POLICY 2023-24 of state of Himachal.

9. The important and relevant Legal Metrology (Packaged Commodities) Rules, 2011 are as under :-

2. Definitions:-

(m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer inclusive of all taxes.

6. Declaration to be made on every package.-

(1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to-

(e) The retail sale price of the package (shall clearly indicate that it is the maximum retail price inclusive of all taxes in Indian currency.)

18. Provisions relating to wholesale dealer and retail dealers.- (2) No retail dealer or other person including manufacturer, packer, importer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof.

These rules were amended in 2021 and came into force from April 2023 an important amendment was that the retail sale price of the package shall clearly indicate that it is the maximum retail price inclusive of all taxes in Indian Currency. This will allow the manufacturer, packer and importer to declare the MRP on the pre-packed commodities in a simplified manner while at the same time safeguarding the interests of consumers.

10. Some provisions of CHAPTER XI: MISCELLANEOUS and CHAPTER XII FOR PENALTIES of THE EXCISE POLICY 2023-24 are relevant and important one and these provisions too are required and necessary to be refer hereinafter

11.22 All retail licensees of liquor in the state of Himachal Pradesh may provide facility of swipe machines, where ever possible, for payments through debit/credit cards and facility of payment through

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mobile applications on their vends for the customers.

11.36 The following profit margins shall be allowed to the retailers on Country Liquor, IMFS, Indian Made Beer, BIO Beer and BIO brands :-

Sr. No.	Type of Liquor	Profit Margin of Retailers.
1.	BIO (Single Malt, Whisky, Rum, Gin, Vodka etc./BIO Beer/BIO Wines & Cider) except sale to L10BB	10%
2.	All Indian Made Beer Brands	30%
3.	Country Liquor	30%
4.	IMFS with EDP of Rs1000/- or less IMFS with EDP of more than Rs 1000/-	15%
5.	Sale of BIO brands to L-10BB	5%

In the same chapter 11 of the policy the department of state taxes and excise Himachal Pradesh has proposed some progressive measures which are as under :-

11.42 PROGRESSIVE MEASURES UNDER THE EXCISE ADMINISTRATION TRACK AND TRACE:-

a) An effective end to end online Excise Administration System shall be setup in the State which shall include the facility of track and trace of liquor bottles besides other modules for real time monitoring.

b) In order to ensure the effective implementation of the track and trace mechanism, the distributors, wholesalers and retailers shall install their own hardware as per the specifications provided by the department and this mechanism shall be started on or before 30-04-2023. c) xxxxxx d)xxxxxx e)xxxxxx.

In CHAPTER XII: PROVISIONS FOR PENALTIES viii) If any L-2, L-14 and L-14A licensee sells liquor below the MSP or above MRP fixed by the Commissioner of State Taxes & Excise such licensees shall be imposed penalty by the Zonal Collector of Rs.15,000/ for the first such offence, Rs 25,000/- for the second offence and Rs. 50,000/ for the third offence. The license of the retailer shall be liable to be cancelled on 4th such offence. Both the Legal Metrology (Packaged Commodities) Rules 2011 as well as THE EXCISE POLICY 2023-24 of state of Himachal are framed in such a manner that the consumer rights be protected and it is the basic spirit of these rules and policy

that, No one can charge above the MRP mentioned in product and penalty will be imposed upon violators.

11. Ld. Counsel for opposite party argued that assistant Controller, Legal Metrology, (W&M) Dharamshala has already imposed the penalty upon the opposite party that too on the complaint of present complainant, so any compensation if imposed upon opposite party will render to be double jeopardy. We observe that this commission is dealing with a consumer complaint and as we have jurisdiction to entertain such complaint as matter before us pertains to unfair trade practice whereas penalty imposed by the weights and measurement department is regarding violation of Legal Metrology rules. In a judgment dated 2 November 2020, passed by Hon'ble Supreme Court of India in the case of M/s Imperia Structures Ltd v Anil Patni & Another (Civil Appeal No. 3581-3590 of 2020), The principles laid down in this judgment by Hon'ble Supreme Court, finds place in a range of earlier series of decisions passed by various High Courts as well as the National Consumer Disputes Redressal Commission (NCRDRC) which have stated that allottees / homebuyers are well within their rights to avail remedies the CP Act as well as RERA and even the Insolvency and Bankruptcy Code 2016 (IBC). Hon'ble Supreme Court of India also referred to the present Consumer Protection Act 2019 (New Act) and found that the new Act saved all actions taken or purported to have been taken under the CP Act, and the savings provision there under has been enacted with an intent to secure the remedies under New Act dealing with protection of the interests of Consumers, even after the RERA Act

was brought into force. As such, it held that the proceedings initiated by the complainants in the present cases and the resultant actions including the orders passed by the NCDRC were fully saved.

12. Hon'ble NCDRC in an another matter titled as Western Railway Vs Vinod Sharma First appeal no. 451/2015 decided on 18th January, 2017 has held notwithstanding provisions of Railways Act, 1989 and availability of Railways Claims Tribunal Act 1987, consumer Courts will have the power to adjudicate upon the consumer issues with regard to Railway passengers. It was observed that Consumer Protection Act is a special legislation, enacted to provide better protection for the interest of the consumers in diverse areas. Consumer Protection Act is a beneficial legislation, specially enacted for protection of consumers and provides an additional remedy in the shape of Section 3 of the Consumer Protection Act, which clearly lays down that the provisions of the Act shall be in addition to, and not in derogation of provisions of any other law for the time being in force. A harmonious construction of provisions contained in the Consumer Protection Act and Railways Act etc. shall indicate that jurisdiction of the consumer fora cannot be barred, even if the provisions to provide compensations are laid down in the Railway legislation. Similarly here in consumer protection Act 2019 the earlier section 3 of consumer protection Act 1986 is replaced as section 100. So on the same lines the complainant being a consumer is having a right for protection pertaining to price of goods and once the opposite party charged amount more than the MRP then We

opine that this commission is empowered under Section 39 of consumer protection act 2019 to levy just and sufficient compensation against the opposite party for committing deficiency in service and unfair trade practice. The ld. counsel for opposite party also advanced argument regarding actual MRP is not Rs. 85/- on the beer bottle but the opposite party has not denied receiving of Rs. 130/- ,which is more than the MRP. Even the opposite party has not led any evidence so these arguments are only a theoretic one.

13. Ld. Counsel for opposite party has raised another argument that the bottles were of previous year and as these bottles were of old stock, the department has instructed them to receive actual prices, which is different MRP than printed on the bottle and hence they had no charged any excessive amount. Hon'ble NCDRC. In R. P. NO. 2132 OF 2007 case titled M/S Cargo Tarpaulin Industries vs Sri Mallikarjun B. Kori on 5 July, 2007. Has held that We have gone through the impugned order. It is apparent that the petitioner has charged Rs.112/- for Duck Back Baby Sheet sold to the complainant. Its Maximum Retail Price was Rs.90/-. According to the petitioner that though M.R.P was Rs.124/- but the Duck Back Baby Sheet was having an old label of Rs.92/- and after discussions, the price was settled at Rs.112/-. If there was an old label on the Duck Back Baby Sheet, indicating M.R.P. of Rs.92/- its M.R.P. would not increase, if subsequently due to increased cost of production, transportation etc. M.R.P. of subsequently manufactured goods is increased. If in these circumstances, the State Commission has

imposed exemplary compensation of Rs.10,000/-, we think that the order passed by the State Commission does not call for any interference. Revision petition is dismissed accordingly. In view of

ratio laid down by Hon'ble NCDRC we observe that unless and until the declaration regarding MRP has not been duly substituted by the order of competent authority no retailer or vend can charge any excessive amount over and above MRP. Hence this argument of Ld. Counsel has no force in it.

14. The afore discussion, evidences adduced by complainant and legal provisions are sufficient for us to conclude that indeed the opposite party has charged over and above the MRP. Which is unfair trade practice

15. Now comes the question of directions to passed in the present complaint. As far as the compensation to the complainant is concerned the complainant has sought compensation of Rs. 25000/- , which on the basis of unrebutted affidavit of complainant seems genuine one. Moreover the complainant was tourist; we seem the compensation of Rs. 25000/- as just and sufficient. The complainant is also entitled for litigation expenses to be paid by the opposite party. But cost as prayed is declined as penalty has already been deposited by the opposite party before assistant Controller, Legal Metrology, (W&M) Dharamshala.

16. Apart from this the Ld. Counsel for complainant has argued that stringent directions be passed for discontinuing the

unfair trade practice, we deem it appropriate to direct the opposite party to ensure that such unfair trade practice be discontinued forthwith.

17. Whereas the second argument of Ld. Counsel was that Himachal being a tourist place, the tourists/ consumers are suffering due such unfair trade practices and basically the present complaint is in representative capacity and order be passed directing the opposite party and other vendors to discontinue the unfair trade practice. So that other consumers are not harassed. Here we opine that complaint is not filled in representative capacity, there is no material before us that other consumers were also subjected to this type of unfair trade practice by other vendors. In such situation this commission can only issue an order against the opposite party. This commission is not in favour of passing any orders against the other liquor vendors which are not party in the complaint as no complaint is preferred against them. Even no directions can be passed against the state of Hp as prayed by the Ld. counsel for the complainant. But to discontinue the unfair trade practice we can consider to give certain suggestions to the state of Hp. However it is made clear that these suggestions are not binding upon the state. The state of Himachal though has already intended to take some PROGRESSIVE MEASURES UNDER THE EXCISE ADMINISTRATION to track and trace the liquor bottles, these measures are praiseworthy. But besides these measures more consumer protection centric approach may be incorporated in the present policy and future policies.

18. Accordingly, the complaint is partly allowed. The opposite party is directed to pay compensation to complainant to the tune of Rs.25,000/- and Rs.10,000/- as litigation costs also to be paid by opposite party to the complaint. The opposite party is also directed to discontinue the unfair trade practice forthwith.

19. The copy of this order be sent to the Principal secretary Excise and Taxation Himachal Pradesh and Commissioner of State Taxes and Excise Himachal Pradesh. State of Himachal may consider the suggestions of this commission to develop a software wherein the online receipt containing MRP and Batch number be generated upon every sale of liquor bottle or bottles. The said online receipt/entry may be connected to end to end proposed online Excise Administration System, so as to bring transparency and protection of consumer rights regarding maintaining of quality, quantity, potency, purity, standard and price of goods and products. Apart from this, it be ensured that the rate list of Liquor bottles be placed in conspicuous place of every liquor vend, the rates be depicted in bold letters in Arabic numerals/figures, and product be shown in HINDI as well as in English. If any such software is developed or intended to be developed in future for protecting the valuable consumer rights, then the copy of same be also sent to this Commission.

20. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

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21. A copy of this judgment be also provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

22. File be consigned to record room along with a copy of this Judgment.

(Narayan Thakur)
Member

(Arti Sood)
Member

(Hemanshu Mishra)
President