

Date of Filing:20.02.2023**Date of Order:18.11.2023**

**BEFORE THE BANGALORE I ADDITIONAL DISTRICT
CONSUMER DISPUTES REDRESSAL COMMISSION
SHANTHINAGAR BANGALORE - 27.**

CONSUMER COMPLAINT NO.51/2023**DATED ON THIS THE 18TH NOVEMBER 2023****PRESENT****Sri.B. Narayanappa, M.A., LL.B. - PRESIDENT****Smt.Jyothi N, B.A, LL.B. L.L.M. MEMBER****Smt.Sharavathi S.M, B.A, LL.B., MEMBER****COMPLAINANT :**

Sri. Somashekar Reddy K V,
S/o Late Venkatarayappa K. R,
Aged about 43 years,
Office at No.116, 1st floor, CM Mansion
Avenue Road Cross,
Behind Mysore bank head office,
Bangalore- 560053

Adv: Sri. Byra Reddy

Vs**OPPOSITE PARTY**

The Manager Hypermarket India Pvt Ltd.,
Sparmax Hypermarket store,
Survey No.144,
Yelahanka village,
Bellary Road, Yelahanka,
Bangalore- 560064

Adv: Sri Bargava D Bhat

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Nature of complaint	Deficiency in service
Date of filing of complaint	20.02.2023
Date of Issue notice	01.03.2023
Date of Order	18.11.2023
Duration of Proceeding	Year 8 Months 29 Days

ORDERS PASSED BY SMT.JYOTHI N MEMBER

1. This is the complaint filed by the complainant against the Opposite party (herein referred to as OP) under section 35 of the Consumer Protection Act, 2019 for the deficiency of service and prays, to direct the OP to pay a sum of Rs.50,000/-as compensation for unfair trade practice, mental agony, harassment, humiliation, transport expenditures, miscellaneous expenses, litigation expenses and interest @ 12 p.a from the date of the complaint till the date of realization, besides refund of Rs.22 for the carry bag and parking charged Rs.20 which has illegally collected from complainant and such other relief as this commission deems fit to grant under the fact and circumstances of this case.

2. The brief facts are that

The complainant states that, the OP is a limited company which is doing business of retail sale of Grocery and staples. Daily essentials. Home and personnel care products in the name SPAR Hypermarket, all over world. It is submitted that, the OP has started SPAR Hypermarket store/mall in Yelahanka, Bengaluru. On the day of 08.01.2023 complainant and along with his

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family members visited to SPAR Hypermarket store, in Yelahanka. When complainant was entered to main gate of OP shopping mall security guard obstructed him to bring his own carry bag, hence, without other alternative he went shopping mall without carry bag, thereafter complainant have purchased household items, toys, and other needed things more than 18 items under invoice No.109, vide bill No.7260, for worth around sum of Rs.3037/-, which payment was made through cash.

3. It is states that complainant have purchased articles viz, diguijay Racing cars, Britannia milk Biskts, Toys, Colgate, Lifebuoy soap, Himalaya baby cream items etc., complainant initially believed that OP proved carry bag fee of cost. As such complainant requested for an carry bag for the purpose of carrying items which purchased in the said SPAR hypermarket store. To my shock and surprise, the person on the cash/billing counter insisting carry bag charge, he refused to give carry bag unless its price is paid. In view of complainant purchased several items and paid substantial amount the OP should have given carry bag without insisting charge for it, hence, protested such unwarranted refusal by cash/billing counter person. It is the bounded duty of the store to supply carry bag freely to its customers,

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however the OP denied to give/supply carry bag on free of cost. As complainant had already purchased the items and bill was also raised, having left with no other alternative on protest paid the charge of the carry bag of Rs.22/- . The store illegally charged Rs.22/- towards carry bag under item No.19 in the bill.

4. The immediately after payment of bill, salesman who is in cash/billing counter, stated that who are all purchased more than sum of Rs.3,000/- are eligible for receive on free towel, if they don't want towel give exemption of parking fee, an such circumstance complainant don't want towel and he requested for exemption parking fee, by that salesman stated that he informed the same to parking authorities, but unfortunately in the parking place when complainant seeking exemption of parking free as per promise of saleman OP worker in parking place, without reasons of started to quarrel with the complainant in front of his family members and other customers its caused to humiliated and caused to mental harassment without complainant fault. However OP workers collected two wheeler parking charge sum of Rs.20/- from complainant for parking of 1 hour 22 minutes and wrongly mention his vehicle number as Veh. No. 1947

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instead of 1942. It is stated that the complainant caused a legal notice to the OP on 19.01.2023 calling upon the OP to pay back a sum of Rs.22/- collecting for carry bag and parking charges of Rs.22/-

5. It is states that though providing carry bags free of cost would intrinsic part of the customer satisfaction criteria, which has been time and again pointed out by several Hon'ble consumer forums so also Hon'ble state commissions and moreover it is an criteria under the consumer protection Act. The retailers are trying to take advantage of prohibition of plastic carry bags and exploiting the customers and making money out of it, which is nothing but unfair trade practice and malpractice, which in a way amounts to deficiency of service so far as the customers who were deprived of free carry bags. It would be relevant to brought to the notice of this Hon'ble forum that, despite several clear verdicts in this regard by Hon'ble consumer forums as well as state commissions, the retailers, hotels, OP etc., continued with such unethical malpractice and charging hefty amounts towards carry bags, which they ought not to have charge. Unwarranted scene has been created by the personnel, and that said act of OP resulted in mental agony and harassment to complainant.

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6. The cause of action for the above complaint arose on 08.01.2023 when complainant purchased the goods in the OP store and despite protest and refusal for payment for carry-bag the OP charged Rs.22/- for the carry bag and parking charged Rs.20/- collected the same from complainant caused a legal notice to the OP on 19.01.2023 calling upon the OP to pay back amount that the cause subsists. Hence, this complaint

7. After registration of this complaint, notices were ordered to be issued to OPs. In response to the notice OPs appeared through their counsel and filed version contending that the complaint is not maintainable either on facts or in law and therefore, the complaint is liable to be dismissed.

8. OP states that the gravamen of the allegations raised in the present complaint relate to two primary aspects/allegation:

A. the complainant alleges that he was forcibly charged a sum of Rs.22/- for a carry bag and he was not allowed to bring his own carry bag in to the store;

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B. The second allegation made is that though he had opted for an exemption from paying parking fee, he was forcibly charged parking fee.

While both these allegations are denied in totality, without prejudice to the said stance, it is placed on the record that neither of these allegations relate to any default/defect in the products/ articles purchased or any deficiency in services on the part of the OP and thus, the complaint ought to be dismissed by the Hon'ble commission at the very outset.

9. It is further states that the carry bag being sold by the OP brand is like any other commodity without the logo of the OP brand. The purchase of such carry bags is only optional for a customer to purchase. It is submitted that as far as the products/articles other than the alleged bag sold by the OP store, there has been no default and default alleged by the complainant. It is further states that the parking facility at the mall is provided and managed by the mall and the charges for the same is collected by the mall for the parking facility. Infact the OP had provided parking coupon for free parking fee for 2 hrs

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as per its running promotional offer and same was redeemed by the complainant as shown in the invoice. There can be no allegations of deficiency of service in this regard.

10. There is no signage anywhere in the entire store and the staff of the OP also never oppose if a customer were to bring there own carry bag. In the above case, the complainant had not carried his own bag to the store which is patently visible in the closed circuit TV camera footage maintained by this OP on the date of alleged incident. This OP seeks the leave of this commission to produce the footage at the necessary stage. There was no compulsion whatsoever from this OP and in fact, this OP had conspicuously notified that the unmarked bags were available for purchase at a price, as a separate commodity. While it is true that the OP does provide a waiver of parking fees as per the running promotional offers and the waiver is passed on to the customer by way of a coupon which can be redeemed at the time of billing. If the bill that is handed over to the complainant is perused, it is evident that the complainant has been given the waiver of parking

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charges vide a parking coupon. For all these reasons the OP prays to dismiss the complaint.

11. The complainant has filed his affidavit by way of examination in chief the same was taken as PW1 and got marked Ex-P1 to Ex-P5. On the other hand OP also filed affidavit by way of examination in chief, the same was taken as RW1 and got marked EX-R1 to R7. Both the parties have filed written arguments.

12. The point that would arise for our consideration are as under:-

1. Whether the complainant proves that the alleged deficiency in service on the part of the OP?

2. Whether the complainant is entitled to the reliefs as sought for?

3. What order?

13. Our finding on the aforesaid points are as follows:

Point No.1: In the Affirmative

Point No.2: Partly In the Affirmative

Point No.3: As per final order for the following

::REASONS::

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14. Point No.1 &2:-Both the points inter related hence, both the points are taken for common discussion.

15. The complainant purchased 19 items in OP shop that is Spar Hypermarket store in Yalahanka for Rs.3037/- on 08.01.2023. the complainant requested for a carry bag for a purposed of carrying items which purchase in the said store but OP refused to give carry bag unless its price is paid that is Rs.22/-. Hence, with the protest such unwarranted refused by complainant paid for the carry bag and there after purchasing of more than sum of Rs.3,000/- are eligible for receiving one free towel or exempted of parking fees. Further more OP workers collected parking charges of Rs.20/- from complainant wrongly mentioning vehicle No. as 1947 instead of 1942. Though OP charged Rs.22/- for carry bag and parking charge for Rs.20/- collected the same from complainant caused legal notice to OP on 19.01.2023 to pay back amount that the cause subsists.

16. Now the crux of the matter is to whether the complainant is entitle for relief. The complainant placed the record of invoice of No.109 vide bill No.7260 for worth of around sum of Rs.3,037/- which payments was through cash the invoice bill dated 08.01.2023 as marked has Ex 18. It is also evident from the said invoice

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that OP have additionally charged for a sum of Rs.22 extra an account of carry bags respectively.

17. It has been held by Hon'ble state commission that all kinds of expenses incurred in order to put goods into deliverable state shall be suffered by the seller, as such, the contention raised does not merit acceptance. On the other hand purchase of the carry bag it made optional and their own carry bags containing some item/article intended to be purchased from other shop premises, we cannot expect that for every single item/article intended to be purchased by a customer. He/she needs to carry separate carry bags. For ex. If a customer wants to purchase, say about 15 in number. Daily-use goods/articles like macroin pep, Dettol,oreo,cop, urad, soap, toothpaste, shaving cream, pen, pencil etc. from different shops, we cannot expect him/her to take 15 carry bags from home, for the same. Thus, by not allowing the customers to carry their own bags along with the goods purchased, to carry the same from the shop premises. We are shocked to note the kind of service provided by these big malls/ showrooms. Further it is submitted that OP statutory obligation to provide vehicle parking without collecting the parking fees. Hence, taken into consideration the OP is committed deficiency in service and unfair trade practice and

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complainant is bound to be compensated. The OP is liable to refund of Rs.22/- for the carry bag and exempt to pay parking charges of Rs.20/- which the OP has illegally collected from complainant and further towards the compensation of Rs5,000/- for unfair trade practice, mental agony, harassment, humiliation and Rs.3,000/- for the litigation expenses. **Hence, we answer the Point No.1&2 In the Affirmative**

18. Point No.3:- For the aforesaid reasons, we proceed to pass the following:

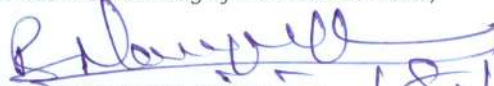
:: ORDER ::


1. **The Complaint is allowed in part with cost.**
2. **The OP is hereby directed to refund the Rs.22/- for the carry bag and exempt to pay parking charges of Rs.20/- which the OP has illegally collected from complainant**
3. **The OP is also directed to pay a sum of Rs.5,000/- towards compensation for unfair trade practice, mental agony, harassment, humiliation and further Rs.3,000/- towards litigation expenses. Within two months from the date of order, falling which the said amount carries interest at 9% p.a till payment.**

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**4. Send a copy of this order to both parties
free of cost.**

(Dictated to the Stenographer transcribed, typed by her, corrected by us and then pronounced in Open Commission on this the 18th day of NOVEMBER 2023)


(SRI. B NARAYANAPPA) 18.11.2023
PRESIDENT)


(SMT. JYOTHI. N) 18/11/2023
MEMBER


(SMT. SHARAVATHI. S.M)
MEMBER