

IN THE COURT OF THE DIST. CONSUMER DISPUTES REDRESSAL COMMISSION,CUTTACK.

C.C.No.162/2023

Dr. Sunil Kumar Rath,

S/o: Simanchal Rath,Plot No.3C/876,

Sector-10,CDA,Cuttack-753014.

... Complainant.

Vrs.

The Manager,

Vishal Mega Mart,Plot No.10-3

CM-1205,Sector-10,Bidanasi Project Area,

Markat Nagar,Cuttack,Dist:Cuttack,

Pin-753014.

...Opp.Party

Present: Sri Debasish Nayak,President.

Sri Sibananda Mohanty,Member.

Date of filing: 20.5.2023

Date of Order: 06.11.2023

For the complainant: Self.

For the O.P: Sri S.K.Barik,Adv. & Associates.

Sri Debasish Nayak,President.

Case of the complainant as made out from the complaint petition in short is that on 18.5.2023 he had purchased 1 kg. of Bikano All Time mixture packet from the shop of the O.P by paying a consideration of Rs.202/-. He could notice that the said product had expired since 15.5.2023 for which he had immediately drawn attention of the Stores Manager and had contacted the Customer Care in that regard but they had not responded to him. Ultimately he had to file this case before this Commission seeking direction to the O.Ps in order to refund the consideration amount of Rs.202/- as paid by him alongwith compensation to the tune of Rs.1,00,000/- towards his mental agony and harassment since because the O.P was engaged in selling expiry products to the local public and

innocent persons. He has also demanded cost of litigation and for any other reliefs as deemed fit and proper.

Together with the complaint petition the complainant has filed photo copies of the product as purchased by him from the O.P and purchase receipt showing the consideration as paid by him.

2. The O.P has contested this case and has filed his written version wherein it is stated by him that the case of the complainant is misconceived, erroneous and untenable in the eye of law. It is urged by the O.P through his written version that the complainant has filed this case only to tarnish the reputation and goodwill of the O.P company. The O.P admits that agreeing to the SOP and internal policy, they put all the products on various discount ranges which are about to expire or are nearer to the expiry date. But they separate the products from the shop those which have already been expired as per the date. The O.P has relied upon various decisions of the Hon'ble Higher Forums thereby harping through those towards the maxim of "Caveat Emptor" and also on the "Best Use" formula. According to the O.P, the complainant with an ulterior motive only to get a handsome amount towards compensation from him has filed this case and the O.P had never sold such expired product as alleged by the complainant. According to the O.P, the alleged product might have been purchased by the complainant on any other earlier date when the stock was fresh "Bikano All Time Mixture" and was available in the store of the O.P. It is thus, the contention of the O.P to dismiss the complaint petition as filed by the complainant.

Together with the written version, the O.P has filed copies of several documents in order to support his stand.

3. Keeping in mind the averments as made in the complaint petition and the contents of the written version of O.P, this Commission thinks it proper to settle the following issues in order to arrive at a definite conclusion here in this case.

- i. Whether the case of the complainant is maintainable?
 - ii. Whether there was any deficiency in service on the part of the O.P and if the O.P has adopted any unfair trade practice?
 - iii. Whether the complainant is entitled to the reliefs as claimed by him?

Issue No.iii.

Out of the three issues, Issue no.ii being the most pertinent issue is taken up first for consideration here in this case.

After perusing the complaint petition, the written version, the written notes of submissions from either sides and on perusal of all the copies of documents as available in the case record, it is noticed that infact the complainant had purchased 1kg "Bikano All Time Mixture" from the shop of O.P on 18.5.2023 at 3.35 P.M and had paid a sum of Rs.202/- towards the price. As per the photo copy of the documents made available together with the complaint petition, the said "Bikano All Time Mixture" was to be used by 15.5.2023. As it appears that 1 kg of "Bikano All Time Mixture" packet was purchased by the complainant from the shop of the O.P for a consideration of Rs.202/- which was sold to him on 18.5.2023. It is the contention of the O.P that the said "Bikano All Time Mixture" packet might have been purchased by the complainant from his shop on any earlier date as a fresh stock. Such plea of the O.P is sheerly an assumption/speculation and is not substantiated through any cogent evidence/document from the side of O.P. As per the written version of the O.P, it is clearly understood that the products those which are going to expire in their store, the same are put to discount sale as per their SOP and internal policy which signifies the sale of products which are going to expire at the shop of the O.P. It is also the contention of the complainant that on 18.5.2023 he had purchased the said mixture packet from the shop of the O.P whose wrapper clearly shows that the said product was required to be used by 15.5.23. The O.P thus is quite callous in his attitude by not removing the expired products from his shop/store but wilfully with a malafide intention was selling those to the innocent public at large and thereby was in the process of gaining illegal money. The purchase of the expired product by the complainant when not paid any attention

even though objection was raised by him to the Customer Care and also to the Store Manager of the O.P; tilts our eye brows. The said attitude of the O.P makes us to arrive at a conclusion that infact the O.P was deficient in his service and had rather practised unfair trade and was thus in a process of amassing illegal money through sale of expired products to the customers/public. The O.P has tried to wriggle out from this case by taking the help of certain decisions of the Hon'ble Higher Forums which are basically on the doctrine of "Caveat Emptor" and "Best Use" policy. After the enactment of the C.P.Act,2019, the doctrine of "Caveat Emptor" is of no use since because it is the duty of the seller to ensure that the product which he intends to sell for which he receives consideration from the purchaser is a genuine one in quality, quantity and efficacy. The policy of "Best Use" is of no use in this case because as it reveals from the wrapper of the said mixture packet, it was to be used by 15.5.2023. It is not mentioned therein that it should have been best if it would have been used by 15.5.2023. Accordingly, all the cunning efforts of the O.P here in this case fails.Accordingly, this issue goes in favour of the complainant.

Issues no.i & iii.

From the discussions as made above, the case of the complainant is maintainable and he is entitled to the reliefs as claimed by him. Hence it is so ordered;

ORDER

The case is decreed on contest against the O.P.Thus, the O.P is directed to refundto the complainant a sum of Rs.202/- as received from the complainant towards the expired mixture packet as sold to him. The O.P is further directed to pay the complainant a sum of Rs.20,000/- towards compensation for his mental agony and harassment and a further sum of Rs.30,000/- towards cost of his litigation.Since because such unfair trade practice has been adopted by the O.P without any caution, the O.P is thus directed to stop such unfair trade practice immediately. The O.P is directed to pay a sum of Rs.5,00,000/- to the State Consumer Welfare Fund alsoas he was adopting such unhealthy trade through nefarious practice.This order is to be carried out within a period of 30 days from the date of receipt of copy of this order.

Order pronounced in the open court on the 6thday of November,2023 under the seal and signature of this Commission.

Sri Debasish Nayak

President

Sri Sibananda Mohanty

Member