

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
AMBALA**

**Complaint Case No. CC/372/2021
(Date of Filing : 07 Dec 2021)**

1. Sartaj Singh

Son of Late Ch. Maharaj Singh 1 Holy House Treasury Road
Ambala City-134003

.....Complainant(s)

Versus

1. National Highway Authority of India

G-5and 6 Sec-10 Dwarka New Delhi-110075 Ministry of Road
Transport and Government of Highways through its authorized
representative.

2. National Highway Authority of India

Chandigarh Bays No. 35-38 First Floor Sec-4 Panchkula
134112 Ministry of Road Transport and government of
Highways through its Reginal Manager.

3. National Highway Authority of India

Rishikesh Sadan Shanti Kutiya House No.1 Chakkar Boileuganj
Bypass Road Shimla Himachal Pradesh Ministry of Road
Transport and Government of Highways through its Regional
Manager.

4. Sanwara Toll Plaza

Kalka Shimla Road Sanwara Himachal Pradesh 173209 through
its Manager/Toll Incharge.

5. State Bank of India

Shambhu to Ghanaur Road Opposite Govt Senior Secondary
School Mardanpur Post office Shambhu Tehsil Rajpura Distt
Patiala Punjab through its Pos/Official

.....Opp.Party(s)

BEFORE:

NEENA SANDHU PRESIDENT

MS.RUBY SHARMA MEMBER

MR. VINOD KUMAR SHARMA MEMBER

PRESENT: Pawan Yadav, Advocate for the Complainant 1

Dated : 14 Dec 2023

Final Order / Judgement

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
AMBALA.**

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|---------------------|---|-------------|
| Complaint case No. | : | 372 of 2021 |
| Date of Institution | : | 07.12.2021 |
| Date of decision | : | 14.12.2023 |

Sartaj Singh, aged 63 years son of late Ch. Maharaj Singh resident of 1, Holy House, Treasury Road, Ambala City-134003.

..... Complainant.

Versus

1. National Highway Authority of India, G-5&6 Sector-10, Dwarka, New Delhi 110075 (Ministry of Road Transport and Government of Highways) through its authorized representative. Phone: 011-25074100, 011-25074200 Email:- tis@nhai.org
2. National Highway Authority of India, Chandigarh, Bays No.35-38, First Floor, Sector-4, Panchkula-134112 (Ministry of Road Transport and Government of Highways) through its Regional Manager.
3. National Highway Authority of India, Rishikesh Sadan Shanti Kutiya House No.1, Chakkar-Boileuganj Bypass Road, Shimla, Himachal Pradesh (Ministry of Road Transport and Government of Highways) through its Regional Manager.
4. Sanwara Toll Plaza, Kalka-Shimla Road, Sanwara, Himachal Pradesh 173209 through its Manager/ toll Incharge.
5. State Bank of India, Shambhu to Ghanaur Road, Opposite Govt. Senior Secondary School, Mardanpur, P.O. Shambhu, Tehsil Rajpura, District Patiala, Punjab through its PoS/official FASTAG. Email :- helpdesk.fastag@sbi.co.in
6. M/s Qualix Information System LLP, B-29, Sector-4, Noida- 201301, Uttar Pradesh through its Chief Executive Officer/ M.D. Email:-(1) hr@qualix.co.in, (2) info@qualix.co.in and (3)sales@qualix.co.in
7. IDFC First Bank, Building No.2, 2nd, 3rd & 4th Floor, Mind Space TTC, Industrial Area, Mumbai, Jui Nagar Back office 400706 through its Chief Executive Officer/M.D.

Ind Address:- IDFC First bank Ltd., Naman Chambers, C-32, G-Block, Bandra-Kurla Complex, Bandra East, Mumbai-400051, India.

Email:-banker@idfcfirstbank.com

..... Opposite Parties

Before: Smt. Neena Sandhu, President.

Smt. Ruby Sharma, Member,

Shri Vinod Kumar Sharma, Member.

Present: Shri M.M Singh, Advocate, counsel for the complainant.

Shri S.S. Garg, Advocate, counsel for the OPs No.1 to 3.

None for OP No.4.

OPs No.5 and 7 already ex parte.

Shri Rajiv Sachdeva, Advocate, counsel for OP No.6.

Order: Smt. Neena Sandhu, President.

1. Complainant has filed this complaint under Section 35 of the Consumer Protection Act, 2019 (hereinafter referred to as 'the Act') against the Opposite Parties (hereinafter referred to as 'OPs') praying for issuance of following directions to them:-

- a. To refund Rs.980/- which were deducted by the OPs wrongly and illegally from the FASTAG account of the complainant alongwith penal interest @ 15% p.a. from the date of its deduction till its realization;
- b. To pay Rs.1,00,000/- as compensation on account of undue harassment, mental stress and agony caused to the complainant;
- c. To pay Rs.55,000/- as cost of litigation;
- d. OR

Grant any other relief which this Hon'ble Commission may deem fit.

2. Brief facts of the case are that the complainant purchased SBI Fastag from OP No.5, which was registered with the Mobile of the Sartaj Singh (complainant), having No.9812053111. The Fastag having ID No.34161FA8203286140242D420 was installed on the vehicle make TOYOTA INNOVA of the complainant bearing registration No. HNA 8. On 17.08.2021 the said vehicle of the complainant while going to Solan crossed Sanwara Toll Plaza (OP No.4) at 11:05:36 a.m. and one way trip charges of Rs.55/- were debited and the complainant on return to Ambala crossed the said Toll Plaza on the same day at 02:46:25 p.m. and Rs.30 were deducted from the FASTAG account of the complainant and the remaining balance left in the said account was Rs.437.17P/-. Thereafter, on 20.08.2021 the complainant received message on his mobile No.9812053111 that his FASTAG account has been debited for Rs.245/- vide transaction ID No.720377-317003-0010012108171108170295_CBD at 14:15:54 for Sanwara Toll Plaza (OP No.4). After some time on the same day, complainant received another message that an amount of Rs.245/-, has been debited from his FASTAG account vide transaction ID No.720377-317003-0010012108171448260212_CBD at 14:25:35 for Sanwara Toll Plaza (OP No.4). Total amount of Rs.490/- (Rs.245+Rs.245) were deducted fraudulently from the said FASTAG account of the complainant by OP No.4 working under OP No.1 to 3, whereas at that time the vehicle of the complainant was parked idly at his residence in Ambala City. After fraudulent deductions of Rs.490 on 20.08.2021 by the OPs, the FASTAG pertaining to the said vehicle of the complainant became negative thereby the FASTAG of the complainant was illegally blocked and was kept deprived of his further visits. The complainant feeling aggrieved and cheated at the hands of the OPs, made a complaint on customer care No.1033 of NHAI on 27.08.2021 which was registered vide complaint No.4274718. The complainant was asked by the said customer care to send photo of Registration Certificate (R.C.), front, rear and side photos of the said vehicle on Whatsapp No.73030-90328. Accordingly the complainant sent photos of Registration Certificate, Front, Rear and Side Photographs of his said vehicle on the whatsapp No. 73030-90328 provided by the customer care agent of the OPs. On 16.10.2021 the said vehicle of the complainant while going to Solan crossed Sanwara Toll Plaza (OP No.4) at 11.20 a.m. and one way trip charges of Rs.55/- were debited and the complainant on return to Ambala crossed the said Toll Plaza on the same day at 03:33 p.m. and Rs.30/- were deducted from the FASTAG account of the complainant and the remaining balance left in the said account was Rs.352.17P/-. Thereafter, second time on 20.10.2021 the complainant was shocked and astonished to see the message that his said FASTAG account was debited for Rs.245/-

at 10:53 p.m. twice vide transaction No.720377-317003-0010012110161530188253_CBD and transaction No. 720377-317003-0010012110161116231380_CBD for Sanwara Toll Plaza (OP NO.4). Immediately at about 10.56 pm the complainant received third message that his FASTAG account has been blocked on account of negative balance. Complaint was lodged with the OP against complaint No.4559985 and 4560850 respectively. The complainant was again asked to send photo of Registration Certificate (R.C), front, rear and side photos of the said vehicle on Whatsapp No.73030-90328. The OPs by their such act and conduct debited total sum of Rs.980/- (Rs.490/- on 20.08.2021 and Rs.490 on 20.10.2021) fraudulently and illegally, due to which, the said FASTAG account of the complainant became negative and was blocked on 20.10.2021 making the complainant unable to do any further travelling. Once a FASTAG account becomes negative in balance and is blocked, how it can be deducted by further transactions making FASTAG account more negative by the OPs. The OPs have caused great mental agony and harassment to the complainant by fraudulently and illegally deducting total of Rs.980/- from his FASTAG account. Due to such deficiency in service and unfair trade practice on the part of the OPs, the complainant is unable to recharge his FASTAG account and use the said vehicle for travel purposes. Hence, the present complaint.

3. Upon notice, OPs No.1 to 3 appeared and filed written version wherein they raised preliminary objections to the effect that the present complaint is not maintainable as no cause of action has accrued qua OPs No.1 to 3; the present complaint is false, frivolous, vexatious and has been filed with the ulterior motive; the present dispute involves disputed questions of fact and requires leading voluminous evidence and examining of the account statements of the complainant as well as the accounts of the Toll Plaza therefore it cannot be decided under summary proceedings etc. On merits, it has been stated that a bare perusal of the complaint shows that the complainant is aggrieved of the deduction of toll at Sanwara Toll Plaza being operated by OP No. 4 and as such, OP No.1 to 3 have no privity of contract with the complainant. The alleged toll receipts, if any, have been issued by OP no. 4. There is no fault, imperfection, shortcoming or any deficiency of OPs No.1 to 3. The site of the said toll plaza was handed over to OP no. 4 by OPs No.1 to 3. Necessary toll services including the issuance of toll receipts, etc. at the toll in question are to be provided by OP No. 4 independently. FASTAG has been issued by the OP no. 5. As per the procedure, all transactions and deductions are under the purview of OP No. 5 i.e. SBI. A bare perusal of the whole complaint would show that not even a single allegation has been made against OPs No.1 to 3. The amount involved in the dispute is only Rs. 980/- whereas the complainant is seeking Rs.1,00,000/- for harassment and Rs. 55,000/- as the costs of litigation. It is apparent that the complainant wants to make a profit in the present complaint. Rest of the averments of the complainant were denied by OPs No.1 to 3 and prayed for dismissal of the present complaint with heavy costs.

4. Upon notice, OP No.4 appeared and filed written version wherein it raised preliminary objections to the effect that the present complaint has been filed with malafide intention to have gains by illegal means; the complaint is based on false and fabricated facts; the present case does not fall under the Consumer Protection Act nor is it covered under the definition of "Consumer" under Section 2 (7) of the Consumer Protection Act, 2019; this Commission has got no jurisdiction to entertain, try and adjudicate the present complaint; the present complaint is devoid of any merit and liable to be dismissed being baseless and misleading; the complainant has suppressed the material facts from Commission; the complaint does not have any locus-standi to file the present complaint etc. On merits, it has been stated that the complainant has filed this consumer complaint alleging that an amount of Rs.245/- has been wrongly debited from his FASTAG account

having ID No.34161FA8203286140242D420 on 20.08.2021 at 14:15:54PM at Sanwara Toll Plaza. Also on the same day, an amount of Rs.245/- was again debited from the FASTAG account of the complainant at 14:25:35PM at Sanwara Toll Plaza. In the similar manner, the FASTAG account of complainant was again debited Rs.245/- at 10:53 PM twice and thus total Rs.490/- was deducted on the said date. An amount of Rs.980/- (Rs.490/- on 20.08.2021 & Rs.490/- on 20.10.2021) has been debited from the account of the complainant. Since OP No.4 got the contract of this Sanwara Fee plaza w.e.f. 26.09.2021, therefore, the alleged incident dated 20.08.2021 is not related to the tenure of the OP No.4. The OP No.4 has examined the record of toll plaza of dated 20.10.2021 and found that neither the vehicle of the complainant crossed the toll plaza at 10:53 PM on 20.10.2021 nor any payment is made to the OP No.4 for the alleged vehicle or FASTAG ID. A copy of the Sanwara Toll Plaza handover letter from OP No.1 dated 24.09.2021 is attached as Annexure OP-4/1 and the list of the vehicles crossed Sanwara Toll Plaza on 20.10.2021 at the relevant time is attached as Annexure OP-4/2. The OP No.4 even telephonically inquired from the State Bank of India customer care about the wrongful deduction of Rs.490/- from the fastag ID of the complainant on 20.10.2021. The customer care has informed telephonically that the alleged deduction of Rs.490/- ON 20.10.2021 was refunded to the complainant on 25.10.2021. OP No.4 had never provided any service to the complainant. Toll fee of Rs.245/- is not fixed for any vehicle at the Sanwara Toll Plaza. Rest of the averments of the complainant were denied by OP No.4 and prayed for dismissal of the present complaint with heavy costs.

5. Upon notice, OP No.6 appeared and filed written version wherein it raised preliminary objections to the effect that the complaint is liable to be dismissed on the ground of mis-joinder of parties as complaint has no cause of action against OP No.6; there is no privity of contract between the complaint and OP No.6 within the meaning and expression under the CP Act, as such the complaint being not maintainable is liable to be dismissed on this ground; the proceedings before this Commission are summary in nature and adjudication of issues such as fraud, forgery which involve disputed factual questions should not be adjudicated by this Commission; OP No.6 even did not receive any complaint nor ever involved in any transaction or dealing with the complainant directly and indirectly etc. On merits, it has been stated that OP No.6 has only provided the equipment which was supplied vide purchase order dated 25-12-2019 for the installation of toll plaza at Sanwara toll Plaza Kalka-Shimla Road. After installation, equipment was handed-over to the Client and the Toll Plaza is operated through agencies and managerial staff of the Toll Plaza. OP No.6 has given the limited warranty /guaranty of material and till date it has not received any complaint about the malfunctioning of the equipment provided by OP No.6. More than 1000 vehicles are passing through the toll plaza but no complaint has ever been received from any authority/person regarding the malfunctioning. Rest of the averments of the complainant were denied by OP No.6 and prayed for dismissal of the present complaint with costs.
6. Upon notice, none appeared on behalf of OPs No.5 and 7 before this Commission, therefore, they were proceeded against ex-parte vide orders dated 15.02.2022 and 22.12.2022.
7. Complainant tendered his affidavit as Annexure CW1/A alongwith documents as Annexure C-A to C-G and closed the evidence of the complainant. On the other hand, learned counsel for the OPs No.1 to 3 tendered affidavit of Anand Kumar, Project Director of OPs No.1 to 3-NHAI, PIU-Shimla House No.1, Rishikesh Sadan, Shanti Kutia, Chakkar, Shimla as Annexure OP-1/A and closed the evidence on behalf of OPs No.1 to 3. However, it is pertinent to mention here that the OP No.4 failed to lead any evidence

despite availing various opportunities, therefore, evidence of the OP No.4 have been closed by the order of this Commission on 24.11.2023. Learned counsel for the OP No.6 tendered affidavit of Vivek Bhardwaj, Senior Manager of OP No.6-M/s Qualix Information System LLP, B-29, Sector-4, Noida, Uttar Pradesh as Annexure OP-6/A alongwith documents Annexure OP-6/1 to OP-6/4 and closed the evidence on behalf of OP No.6.

8. None put in appearance on behalf of OP No.4 on the date of arguments, and, therefore we have heard the learned counsel for the complainant and learned counsel for the OPs No.1 to 3 and 6 and have also carefully gone through the case file.
9. Learned counsel for the complainant submitted that by illegally deducting the amount of Rs.980/- (Rs.490/- on 20.08.2021 and Rs.490/- on 20.10.2021) from his fast-tag account twice, despite the fact that he did not perform journey on the said dates, the OPs are deficient in providing service, negligent and adopted unfair trade practice.
10. On the contrary, the learned counsel for the OPs No.1 to 3 submitted that the complainant is aggrieved of the deduction of toll at Sanwara Toll Plaza being operated by OP No.4 and the alleged toll receipts were issued by it, as such, OP No.1 to 3 have no privity of contract with the complainant.
11. Learned counsel for OP No.6 submitted that OP No.6 has neither received any complaint nor ever involved in any transaction or dealing with the complainant directly or indirectly. He further submitted that OP No.6 has only provided the equipment which was supplied vide purchase order dated 25-12-2019 for the installation of toll plaza at Sanwara toll Plaza Kalka-Shimla Road. After installation equipment was handed over to the Client, it is being operated through agencies and managerial staff of the Toll Plaza. OP No.6 has given the limited warranty /guaranty of material and till date it has not received any complaint about the malfunctioning of the equipment provided by it.
12. It is the definite case of the complainant that the total amount of Rs.980/- (Rs.490/- on 20.08.2021 and Rs.490/- on 20.10.2021) vide Annexure CC and Annexure CE has been wrongly deducted through his fast-tag which stood purchased by him from OP No.5. It is also the definite case of the complainant that at the time of deduction of the said amounts, he never crossed the Toll plaza of OP No.4. The stand of the OP No.4 is that on examination of the record of Toll Plaza it was found that the vehicle of the complainant never crossed the toll plaza on the disputed date(s)/time meaning thereby that the version of the complainant to the effect that despite the fact that his vehicle never crossed toll plaza of OP No.4 but an amount of Rs.980/- (Rs.490/- on 20.08.2021 and Rs.490/- on 20.10.2021) was deducted from his fastag, stood endorsed by OP No.4. Under these circumstances, OP No.4 cannot be said to be at fault in any manner. It may be stated here that since the said fast-tag had been issued by OP No.5, as such, it could have cleared the situation regarding the said deductions from the fastag account of the complainant, especially, when OP No.4 has taken a specific stand in its written version that it contacted OP No.5 in the matter, which informed it that the part amount of Rs.490/- stood refunded to the complainant by OP No.5. It is significant to mention here that, as stated above, notice of this complaint was sent to OP No.5 seeking its version, yet, nobody appeared on its behalf, despite service, as a result whereof, it was proceeded ex-parte vide order dated 15.02.2022 This act of the OP No.5 draws an adverse inference against it. The non-appearance of the OP No.5 shows that it has nothing to say in its defence against the allegations made by the complainant. It may be stated here that when the vehicle of the complainant did not cross the toll plaza of the OP No.4 then the question of deducting the toll tax from his fastag account maintained by the OP No.5 does not arise at all and as such, it is liable to refund the amount of Rs.980/-(Rs.490/- on 20.08.2021 and Rs.490/- on 20.10.2021) which was deducted wrongly. It is also liable to compensate the complainant

for the mental agony and physical harassment suffered by him alongwith litigation expenses.

13. Since no deficiency in service has been proved on the part of OPs No.1 to 4, 6 and 7, as such, complaint filed by the complainant against them is liable to be dismissed.
14. In view of the aforesaid discussion, we hereby dismiss the present complaint against OPs No.1 to 4, 6 and 7 and allow the same against OP no.5 and direct it, in the following manner:-
 - i. To refund the amount of Rs.980/- (Rs.490/- deducted on 20.08.2021 and Rs.490/- deducted on 20.10.2021), to the complainant alongwith interest @6% p.a. from the respective dates of deductions, till realization. However, it is made clear that OP No.5 shall be at liberty to deduct the amount, if any, already refunded to the complainant.
 - ii. To pay Rs.7,000/- as compensation for the mental agony and physical harassment suffered by the complainant.
 - iii. To pay Rs.3,000/- as litigation expenses.

The OP No.5 is further directed to comply with the aforesaid directions within the period of 45 days, from the date of receipt of the certified copy of the order, failing which the OP No.5 shall pay interest @ 8% per annum on the awarded amount, from the date of default, till realization. Certified copy of this order be supplied to the parties concerned, forthwith, free of cost as permissible under Rules. File be indexed and consigned to the Record Room.

Announced:- 14.12.2023

(Vinod Kumar Sharma)
Member

(Ruby Sharma)
Member

(Neena Sandhu)
President

**[NEENA SANDHU]
PRESIDENT**

**[MS.RUBY SHARMA]
MEMBER**

**[MR. VINOD KUMAR SHARMA]
MEMBER**