

IN THE CONSUMER DISPUTES REDRESSAL FORUM, KOLLAM

Dated this the 27th Day of April 2019



Present: - Sri. E.M.Muhammed Ibrahim, B.A, LL.M. President
Smt.S.Sandhya Rani, BSc,LL.B, Member

CC No.213/16

Gangadethan.G
Residing at Sundarasseril ✓ : Complainant
Puthenthura P.O, Neendakara
Kollam-691582

V/s

1. The Manager : Opposite parties
T.V.Sundaram Iyengar & Sons Ltd.
Simis square, near IOC fuel station
Muttathara, Vallakkadavu P.O
Thiruvananthapuram-695008.
[By Adv.Sabor Alexander]
2. The Manager
Renault India
Sharon Building, door No.29787
Near Mega mart Building, Vyttila Junction
Cochin-682019.

ORDER

E.M.MUHAMMED IBRAHIM , B.A, LL.M,PRESIDENT

This is a case based on a consumer complaint filed under Section 12 of the Consumer Protection Act.

The averments in the complaint in short are as follows:-

2. During the month of August 2014 which was the Onam festival season the 2nd opposite party given vide advertisement in daily news papers and television channels, by offering that those customers who books Renault vehicles during the month of August 2014 have the opportunity to win 5 Duster vehicles as bumper prize and other assured gifts. Fascinated by the above offer, the complainant who is a lawyer by profession booked a Duster vehicle on 16.08.14 through the consultant of the 1st opposite party named Mr.Mithun

who approach the complainant at his residence at Puthenthura. While booking the above vehicle the complainant paid an advance of Rs.10000/-. A lucky draw coupon has been issued to the complainant vide No.321 was also issued to the complainant and the counter foil of the same was taken up for lucky draw. It was informed that the draws are conducted on 18th August, 1st, 10th, 24th September and 3rd October respectively. In the mean time the 1st opposite party delivered the vehicle to the complainant on receiving the balance amount. The complainant was waiting for the draws and on each day tried to contact the opposite party in order to know the result of draws, they pretend busy engagement and told that it will inform in proper way at the earliest. The 1st opposite party somehow evaded the queries and were informed that the results will intimated through SMS but it was not materialised. They have not intimated the results neither through SMS nor via letter. That since there was no clarity in the draws, on a detailed enquiry it was revealed that the draws were not properly conducted, manipulations are done in the process and the opposite parties failed in carrying out the process of draw of lucky coupon as envisaged by law. An advocate notice was sent to both the opposite parties in this regard and even though they have received the same only 1st opposite party responded by sending a reply notice stating vague arguments which will not in no way establish with proof that they have properly conducted the draws and published the result. All those activities of the opposite parties constitute unfair trade practice, deficiency in service and ultimately cheating of customer by way of advertisements. There is gross negligence on the part of the opposite parties and the same amounts to deficiency in service. The attitude and feeling of being subjected to deception by the opposite parties caused much mental agony to the complainant the opposite parties are liable to compensate. Hence the complaint.



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3. The 2nd opposite party remained exparte. 1st opposite party filed a detailed written version raising the following contentions. The complaint is not maintainable against the 1st opposite party and it is to be dismissed in limine. However the 1st opposite party would admit that they have made an advertisement during Onam festival of 2014 at the instance of 2nd opposite party. But the 2nd opposite party had given specific guidelines with regard to the offer. The terms and conditions are clearly enumerated in Item No.2 of the list of documents produced by the complainant. The 1st opposite party is not answerable to any of the averments in this regard. The 2nd opposite party reserved the right to alter or modify the terms as per their discretion. 1st opposite party is only a sales and service centre of the 2nd opposite party. Therefore it is the 2nd opposite party who is answerable to all the averments in para 3 of the complaint. The 2nd opposite party has been set exparte in this complaint. The complainant is seeking a relief against the 2nd opposite party who is the manufacturer of Duster Vehicles and the creator of this disputed Onam offer.

4. The 1st opposite party had specifically informed the complainant that being a lucky draw of coupons there was no certainty that the complainant would be selected. The complainant was fully appraised of his chances of either winning or losing in the offer made by the 1st opposite party. The proposed lucky draws had been conducted on the notified dates at the 2nd opposite party's show room at Kalamassery in Ernakulam District. The complainant was aware of this fact as per item 9 in the terms and conditions executed by the complainant. The 1st opposite party asserts that on prior dates of the draw on all five instances the complainant was informed through SMS/telephonically of such date of draw. Finally on 10/10/14 the complainant was informed through a letter by the 1st opposite party, of the names of the winners of the lucky draw. The 1st opposite party has published the details

regarding the result of the lucky draws in several leading daily news paper and is ready to produce the list of the lucky winners in this draw shortly. All allegations raised therein are only to suit the complainant's case and hence denied. The complainant lacks bonafides in raising such allegations regarding conduct of the draw, alleged manipulation and process of draw. The complainant is put to strict proof to prove his shameless and imaginary allegations.

5. A befitting reply was sent by 1st opposite party in response to the advocate notice of the complainant. The facts and circumstances of this complaint will only undermine the complainant's case. There is no instance of deficiency in service and unfair trade practice on the part of 1st opposite party as against the complainant. The allegation of customer cheating is stoutly denied by 1st opposite party. The complainant is trying to extract unlawful gain from 1st opposite party by such baseless allegation. The 1st opposite party is neither liable nor responsible for the alleged pain and suffering of the complainant. The complaint is only to harass and an attempt to bring disrepute to the 1st opposite party. The relief claimed by the complainant is unsustainable as against the 1st opposite party. The 1st opposite party is not liable to compensate the complainant as per his claim. Neither the 1st opposite party nor M/s.TVS&Sons Ltd. are liable to grant compensation or any relief to the complainant. The 1st opposite party further prays to dismiss the complaint with costs and compensatory costs.

6. In view of the above pleadings the points that arise for consideration are:-

1. Whether there is any deficiency in service or any unfair trade practice on the part of the opposite parties No.1&2 in respect of the lucky draw?
2. Whether the complainant is entitled to get reliefs sought for?
3. Relief and costs.

7. Evidence on the side of the complainant consists of the oral evidence of PW1&2 and Ext.P1 to P13 series. Evidence on the side of the 1st opposite party consists of oral evidence of DW1&2 and Ext.D1 to D5 documents. 2nd opposite party remain exparte. Both parties have filed notes of arguments.

Point No.1&2

8. For avoiding repetition of discussion of materials these 2 points are considered together. Admittedly the opposite parties especially the 1st opposite party for their promotion of business and to attract the customers a scheme was formulated and made wide publicity through medias making an offer that if any customer book any Duster vehicle from 1st August 2014 to 30th September 2014 will get a coupon to participate in the bumper prize draw. In fact it was Onam offer. It is also brought out in evidence that the above offer was published through Ext.P7 Hindu daily newspaper. According to the complainant he is an advocate by profession and was attracted by the above advertisement purchased one Duster car -SUV. It is also an undisputed fact that while purchasing the car the 1st opposite party has issued Ext.P2 lucky coupon to the complainant. The terms and conditions of the lucky draw was stated in Ext.P2 itself. Accordingly a purchaser of a Renault Duster is eligible to get one coupon and for establishing the fare trade practice the draws of the said coupon would be done by a prominent independent person and the announcement of the winner has to be done in public and should be published in media as early as possible. The above facts remains unchallenged. However the complainant would alleged that there was no clarity in conducting draws. Now the question to be considered is whether the lucky draw was fairly conducted by the opposite parties. According to the opposite parties the 1st opposite party was only facilitating this lucky draw and the 2nd opposite party who is the manufacturer of the vehicle has conducted the lucky draw. As per the

advertisement the lucky draw has to be held on 5 different days and each days winner would get a Duster vehicle free. But the winner has to bear the insurance and registration charges, that 5 separate lucky draws were held at the showroom at Eranakulam on different dates as published and 5 winners were selected out of these draws and they have published the list of winners in the draws as at the earliest.

9. The above contentions of the 1st opposite party according to the complainant is incorrect. The oral evidence of PW1 who is none other than the complainant would show that the complainant was eagerly waiting for the draws and on each day he tried to contact the opposite party in order to know the result of draws. But the opposite party pretended busy engagement and told that it will be informed in proper way at the earliest. They somehow evaded the queries and informed that the result will be intimated through SMS. However that was not materialised. Opposite parties have not informed the result either through SMS nor through any other manner. The opposite parties did not care to do the minimum publicity in the daily newspaper. The result was also not published in the official website also. According to PW1 he made a detailed enquiry and it was revealed that the draws were not properly conducted and manipulations were done in the process and the opposite parties failed to carry out the process of draw of lucky coupon as per the terms and conditions. Hence he sent Ext.P4 notice alleging the above facts. Ext.P5 series is the postal receipts evidencing the sending of P4 notice. In spite of lengthy cross examination nothing material has been brought out in evidence to disbelieve the oral evidence of PW1 which stands corroborated by Ext.P4 lawyer notice.

10. It is true that on receipt of Ext.P4 notice the 1st opposite party has sent Ext.P6 reply notice. The 2nd opposite party though received notices has not responded. It is not clear from the content of Ext.P6 reply notice that the draw

of lucky coupon and publishing the result was fairly done as claimed by the opposite party.



11. The complainant would further allege that the opposite parties have ultimately cheated the complainant and other customers by way of advertisement and opposite parties have gathered unlawful gain by making Ext.P7 paper publication. According to the complainant the date of draw of lucky coupon including Ext.P2 issued to the complainant was not intimated to the complainant. But the opposite party would claim that the date of draw was intimated to the complainant through SMS on the previous day of the draw. The complainant has denied the same but the contesting 1st opposite party has not taken any steps to prove that the date of lucky draw was intimated to the complainant through SMS. It is pertinent to point out that the complainant has filed one IA praying to produce the list of 5 persons to whom prize has been given in the lucky draw. Though the 1st opposite party has produced the name of 5 persons (Ext.P9) they have not produced any reliable evidence to show that the above 5 persons have been given the prize as claimed. It is to be pointed out that the 1st opposite party has not produced the list of winners along with their written version which creates doubt in the minds of the forum regarding the genuineness of the list of winners.

12. The oral evidence of PW2 also would support the case of the complainant. According to PW2 is Abhilash (who has also purchased one Duster SUV car from the opposite parties,) he is the owner of the car sold by the opposite parties and Ext.P8 is the true copy of R.C book of that vehicle. He further proves Ext.P9 list of 5 persons who won the prize in the lucky draw. It is clear from Ext.P9 list that the 2nd name in the said list is Abhilash who is none other than PW2 in whose name Duster RXL 788500 model has been given. But according to PW2 he has purchased the above Duster car from the 1st opposite party by paying its price. The evidence of PW2 would further

show that he intended to purchase one Duster car in connection with his marriage. Hence he approach several dealers including 1st opposite party . But the vehicle offered for sale by the dealers were not liked by him. When he was about to return from the showroom of the 1st opposite party the executive informed that one Duster car won in the lottery is available at the showroom and they have also given the details of the person who won the lottery. The person who won the lottery was Thara Biju. She has also telephoned himself and offered lesser price than the showroom price. Finally she agreed to sell the car to himself at a price of Rs.6,00,000/-. He agreed for the same and made an advance payment of Rs.10000/- for purchasing the same. Later he paid Rs.1,85,000/- as gift tax. Ext.P10 is the receipt indicating the payment of gift tax. According to PW2 he paid the above amount as gift tax as directed by the 1st opposite party. That he paid Rs.5,50,000/- in the name of Thara Biju and Biju on 01.10.14 through bank and obtained Ext.P11 receipt. Later the said Thara Biju demanded Rs.50,000/- more. Accordingly he paid the said 50,000/- and altogether he paid Rs.6,00,000/- to Smt.Thara Biju. According to PW2 t he fact that he had paid the amount to the said Thara Biju is known to the 1st opposite party also PW2 has further sworn that while purchasing the above Duster car he has not received a coupon like Ext.P2. Ext.P7 advertisement published in the newspaper has also not come to his knowledge. The . opposite parties have not informed the fact that he is one among the person who won the lucky draw. The vehicle purchased by him as per Ext.P8 RC book is not to the one obtained by him by winning any lucky draw. He further proves Ext.P11 to P13 series documents. Ext.P11 is the original Ext.P10 receipt which was marked subject proof. Ext.P12 is the original receipt evidencing the booking of the Duster on 30.09.14 by paying Rs.10,000/- to the 1st opposite party. Ext.P13 series are the 4 receipts obtained by PW2 from District Co-operative Bank while effecting payment of the sale price of the



above vehicle. It is brought out in evidence that the road price of the duster vehicle during the year 2014 was above 8,00,000/- and PW2 come to know that Thara Biju has won in the lottery through the executives of the opposite party. Though PW2 has been subjected to severe cross examination nothing material has been brought out to disbelieve the above evidence of PW2. We find nothing to disbelieve the above version of PW2. In view of the oral evidence of PW2 coupled with Ext.P8, P10 to P13 documents the contention of the 1st opposite party that P9 is the list of winners in the lucky draw proved to be false.

13. The specific contention of the 1st opposite party in this regard is that in connection with Onam season of the year 2014 the 2nd opposite party had intimated Onam campaign as part of sales promotion. The campaign period was 01.08.14 to 30.09.14. The 2nd opposite party had given specific guidelines with regard to conduct the lucky draw and the terms and conditions enumerated in Ext.P2 coupon. As the terms and conditions were laid down by the 2nd opposite party they have every right to alter or modify the terms and conditions as per their discretion. The 1st opposite party was only facilitating the lucky draw. The 1st opposite party would rely on the oral evidence of DW1&2 and Ext.D1 to D5 documents to substantiate their contention and to disprove the case of the complainant.

14. According to DW1 there were 5 draws conducted on different date at the 2nd opposite party's showroom at Kalamassery, Ernakulam District and 5 customers were selected as lucky winners in the above draws and all these 5 winners were promptly informed the fact by the 1st opposite party. According to DW1 as the complainant was not a winner he was not informed. DW1 has further sworn that one Thara Jayasree Nair had purchased Renault vehicle as per Ext.D1 to D5 documents and as she came out as a winner she was informed by the 1st opposite party. She acknowledged the information and given declaration to the 1st opposite party acknowledging the receipt of the gift

vehicle and also payment of gift tax. The declaration dated 30.09.14 is proved through this witness as Ext.D7. As the said Thara Jayasree Nair was not intended to retain a 2nd Duster vehicle she informed the 1st opposite party to find someone who would be interested in purchasing the said vehicle and in such a context PW2 approached the 1st opposite party and decided to purchase the said vehicle. The 1st opposite party provided the said Thara's details to PW2 and thus a deal was struck between Thara and PW2 exclusively. The price and manner of transaction were negotiated between these parties and finally PW2 agreed the price demanded by Thara. She was also given Ext.D8 NOC to the 1st opposite party for billing the gifted vehicle to PW2. The 1st opposite party has obtained confirmation from the 2nd opposite party and a copy of the e-mail obtained from the 2nd opposite party is marked as Ext.D9. The sale consideration has been passed between PW2 and Thara and the 1st opposite party is not a party to these transactions. The 1st opposite party only helped their customer Thara to find out a prospective buyer for her gifted vehicle and has not committed any unfair trade practice or deficiency in service. It is to be pointed out that the above version of DW1 is to viewed with suspicious since the 1st opposite party has no such pleadings either in the written version or in P6 reply notice. The fact that 1st opposite party is having documentary evidence to prove that Smt.Thara Jayasree Nair is one of the winners who ultimately sold the vehicle to PW2 is a new case which is not made mentioned in the pleadings.

15. According to DW1 the lucky draw was conducted with utmost transparency. In the list of winners(Ext.P9) produced by the 1st opposite party a typographical error has been occurred. Instead of mentioning Thara Jayasree Nair who won the lucky draw the name of Abhilash who purchased Thara's gifted vehicle crept while stating the 5 winners. This is an inadvertent mistake according to DW1. Infact Thara was the actual winner and PW2 Abhilash is the person who purchased the said vehicle from Thara except the actual winner

Thara Jayasree Nair all the remaining 4 are of the actual winners. However during cross examination DW1 would admit that the lucky draw has not been published in any newspaper and he was no knowledge that the list of winners has been published in any newspaper and he has not find any such news items. The fact that PW2 Abhilash is a winner is not stated in the written version. The averments stated in paragraph 5&6 of the proof affidavit are not find a place in the version.

16. Even if the entire version of DW1 is believed in toto it would not help to prove the defence contention, due to the following reasons DW1 would admit that he is unaware of the publication of news item regarding taking lottery. He has not seen any publication of news in any newspaper. DW1 would further admitted that the Abhilash whose name is stated in P9 list is not a winner. The fact that Thara is a winner is not stated in the P9 list. DW1 would further admit that the person who booked the car is Thara Biju but the person who signed against the name in Ext.D1 is not Thara Biju. According to DW1 Thara Jayasree is the winner but there is no chance of Thara Jayasree winning the lottery as Thara Biju is the lady who booked the car as per customers order form. The address of Thara Biju stated in Ext.D1 and the address of Thara Jayasree shown in Ext.D2 are different. The address of the said lady shown in D2 to D4 are also entirely different. The on road price of the vehicle booked as per D1 order form and purchased as per D3 invoice form and D5 document are also entirely different.

17. The contention of the 1st opposite party that they have conducted draw as per rules and duly published P9 list stating the name of winners appears to be totally incorrect. It is also clear from the materials available on records including the admissions of DW1 and DW2 that the lucky draw was conducted not in a transparent manner and that the name of winners was not duly published in the news paper as alleged by the complainant.

18. It is true that DW2 who is another customer of 1st opposite party has deposed to the effect that by seeing P7 paper publication the Palode Agricultural Co-operative Bank has purchased one Duster car for the use of the said bank and the said Bank has registered the said car in its name and the registration number of the said car is KL-21-J-7269 and the coupon received by the Secretary while purchasing the above car was also included in the process lucky draw and won a petrol Duster car and that fact was intimated to the Bank but as the said car was a petrol vehicle, the Bank decided to sell it. However DW2 would admit that is having no knowledge how many cars were given in the lucky draw nor aware of the places which the lucky draw was conducted. DW2 would further admit that "വിജയിയായവരുടെ പേര് വിവരം എങ്ങും പ്രസിദ്ധീകരിച്ചതായി ഞങ്ങൾക്ക് അറിയില്ല"

19. The above version of DW2 would also probabalise the fact that the lucky draw was conducted not in a transparent manner and the name of the winners were not duly published as per the terms and conditions stated in Ext.P2 coupon. Hence there is deficiency in service and unfair trade practice on the part of the opposite parties and therefore the complainant is entitled to get the reliefs sought for. The points answered accordingly.

Point No.3

In the result complaint stands allowed in the following terms.

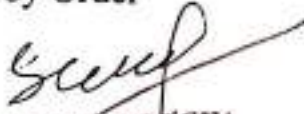
1. The opposite parties No.1 & 2 are directed to pay Rs.2,00,000/- as compensation for the pain and suffering and mental agony caused to the complainant.
2. The opposite parties are also directed to pay Rs.10,000/- as costs of the proceedings.



Opposite party No.1&2 are directed to pay compensation along with costs within 30 days from the date of receipt of a copy of this order, failing which the complainant is entitled to recover Rs.2,00,000/- with interest at the rate of 9% per annum along with costs Rs.10,000/- from Opposite party No.1&2 jointly and severally and from their assets.

Dictated to the Confidential Assistant Smt. Deepa.S transcribed and typed by her corrected by me and pronounced in the Open Forum on this the 27th day of April 2019.

E.M.Muhammed Ibrahim:Sd/-
S.Sandhya Rani:Sd/-
Forwarded/by Order


Senior Superintendent
C.M.P. Kollam



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Witnesses Examined for the Complainant:-

PW1 : Gangadethan.G
 PW2 : Abhilash.V.M

Documents marked for the complainant

Ext.P1 : Customer Order form
 Ext.P2 : Lucky Draw Coupon
 Ext.P3 : Retail Invoice Form No.8B
 Ext.P4 : Lawyer notice
 Ext.P5 : Postal receipt
 Ext.P6 : Reply notice
 Ext.P7 : Newspaper cutting
 Ext.P8 : Copy of certificate of registration
 Ext.P9 : Memo
 Ext.P10 : Copy of receipt
 Ext.P11 : Copy of acknowledgement for NEFT/RTGS
 Ext.P12 : Copy of receipt
 Ext.P13 : Copy of acknowledgement for NEFT/RTGS(4 No.s)

Witness examined for the opposite party:-

DW1 : Ratheesh Kumar
 DW2 : Ramachandran Nair.M

Documents marked for the opposite party

Ext.D1 : Copy of customer order form
 Ext.D2 : Copy of sale certificate
 Ext.D3 : Copy of retail invoice form 8B
 Ext.D4 : Copy of temporary certificate of registration
 Ext.D5 : Copy of letter.

E.M.Muhammed Ibrahim:Sd/-

S.Sandhya Rani:Sd/-

Forwarded/by Order

[Signature]
 Senior Superintendent
 CDRF, Kollam