

Date of Filing: 22-10-2018

Date of Order: 28-01-2020

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM – II,
HYDERABAD**

P r e s e n t

SRI VAKKANTI NARASIMHA RAO, B.A., B.L.,	...PRESIDENT
SRI P.V.T.R. JAWAHAR BABU, M.A., B.L.,	...MEMBER
Smt. R.S. RAJESHREE, B.A., L.L.M.,	...MEMBER

Tuesday, the 28th day of January, 2020

Consumer Case No. 404/2018

BETWEEN:

Baglekar Akash Kumar S/o. B. Prakash Rao, Aged about 20 years, Occ: Student, R/o. Room No.47, E-1 Hostel, O.U. Campus, Tarnaka, Hyderabad – 500 007. Mobile No.8297368722.

...Complainant

AND

1. Penguin Books India Pvt. Ltd., Rep. by, 11 Community Centre, Panchsheel Park, New Delhi, India – 110 017.

2. Gopsons Papers Ltd., Rep. by, A-2 & 3, Sector 64, Noida, Uttar Pradesh – 201 301.

.... Opposite Parties

This complaint is coming before us on this the 09th day of January, 2020 in the presence of Baglekar Akash Kumar (PIP) for the complainant and A.P. Suresh & Associates Advocate for the opposite party No.1 and Opposite party No.2 Set-expert, and on perusal of material papers on

record, having stood over for consideration till this day, the Forum passed the following:

ORDER

(BY SRI VAKKANTI NARASIMHA RAO, HON'BLE PRESIDENT ON BEHALF OF THE BENCH)

This complaint is filed by the complainant under Section 12 of Consumer Protection Act, 1986 with a prayer to direct the opposite parties jointly and severally to:

1. Print & publish the retail price at which the product (book) is being sold.
2. Pay compensation of Rs.10,000/- for mental agony.
3. Pay compensation of Rs.10,000/- for resorting to unfair trade practice.
4. Pay Rs.10,000/- for resort to such illicit practices on part of the opposite parties.
5. Pay interest of [Rs.@12.5%](#).

BRIEF FACTS OF THE COMPLAINT:

The complainant ordered one book by name "OUTLIERS: The Story of Success by Malcom Gladwell" through Flipkart on 09-10-2018 for the prepaid price consideration of Rs.281/- (Rupees Two Hundred Eighty one only) with order ID: OD113590427565057000 which was delivered him on 16-10-2018 to his address situated at Tarnaka, Hyderabad.

Two days after receiving the book he opened the seal and searched for actual price of the book purchased. There was no mention of price printed anywhere in the book purchased. An invoice bill given by the Flipkart shows that the book price as Rs.281/-. Non-mention of the price of the book by the publisher who is the opposite party No.1 and printing authority who is the opposite party No.2 on prints the same on the book against the Consumer's Right and the entire information of the products which he purchased for a consideration and they have resorted to unfair trade practice. In the absence of non-mention of price of the product, the seller made resort to charging extra amount from the Consumer's which is against the mandate of the Consumer Protection Act, 1986.

WRITTEN VERSION OF THE OPPOSITE PARTY NO.1:-

All the averments of the complaint are denied except those that are specifically traversed hereunder.

No cause of action against this opposite party for filing the complaint. The product was neither sold by this opposite party nor provided any services to the complainant. As such no grievance as alleged by the complainant is to be entertained. The complaint is liable to be dismissed for non-joiner of proper and necessary party. The claim of

the complainant is that he purchased the alleged Book from the Flipkart but Flipkart has not been made a party and sought to raise claim against the opposite parties. Hence this complaint is liable to be dismissed.

Each book is affixed with a sticker with the MRP of INR 499/-. The said book was not directly purchased from opposite party No.1 for which no privity of contract with the opposite party No.1. Hence this complaint is liable to be dismissed.

The MRP of book “OUTLIERS: The Story of Success by Malcom Gladwell” is Rs.499/- and the said MRP is consistent on all the platforms on which the book is being sold including Amazon and Flipkart. There is no discrepancy regarding the MRP of book and thus the same cannot be considered as unfair trade practice. The book has been purchased at a stipulated price clearly indicates that the book was not sold without a price. Consisting the above facts the complaint is liable to be dismissed.

None appears for the opposite party No.2 despite services of the notice. Hence the opposite party No.2 was a set expert while passing orders.

Evidence Affidavit of the complaint is filed as PW-1. Ex. A- 1 to Ex. A- 3 was marked for the complainant. Evidence Affidavit of Opposite

Party No.1 was filed through Mr. Sanjiv Gupta who is its Authorized Signatory as DW-1. Ex. B-1 to Ex. B-4 was marked on its behalf.

Written arguments of complainant as well as opposite party filed.

Heard Arguments of both parties.

On perusal of material available on record the points to be answered for determination are:-

1. Whether the Forum has got jurisdiction to entertain the complaint?
2. Whether any adoption of unfair trade practice is there on the part of the opposite parties?
3. Whether the complainant is entitled for the reliefs sought?
4. To what reliefs?

Admitted facts:-

1. Ordered one book by name "OUTLIERS: The Story of Success by Malcom Gladwell" through Flipkart on 09-10-2018 by the complainant on prepaid price consideration.
2. Book was delivered at Tarnaka, Hyderabad on 16-10-2018 where the complainant resides.

POINT NO.1:-

It is not in dispute that that tax invoice under Ex.A1 vides order ID: OD113590427565057000 shows that the delivery address was Osmania Campus, Tarnaka, Room No.47 E-1 Hostel, Secunderabad and the book was delivered at the address given under Ex. A1. It established that in view of the delivery of the book took place within the local limits of this Forum, it has got territorial jurisdiction in view of the of part of cause of action arose within the local limits of this Forum.

As the claim under this complaint does not exceed of Rs.20,00,000/-, this Forum has got pecuniary jurisdiction to entertain the complaint.

POINT NO.2 & 3:-

The main grievance of the complainant is that neither of the opposite parties printed the price of the Book any of the page while it's printing. The non-mention of the price of the book while printing the same is amounts to adoption of unfair trade practice which it gives scope to sale the book by the seller whatever the cost they like. The opposite party No.1 admitted in their counter stating that "each such book is affixed with a sticker with MRP of INR 499/-". It established that no price was printed on the book. The opposite parties failed to establish the factum in

issue for what prevent them from printing its cost on the Book while printing, instead of affixing with a sticker. The burden lies on the opposite party which they failed to disprove. The complainant filed the following documents to substantiate his claim:

1. Ex. A1 is the Tax invoice.
2. Ex. A2 is the copies of the book where no price is mentioned.
3. Ex. A3 is the screen short of Snapdeal book.

The opposite party No. 1 filed the following documents:

1. Ex. B1 is the certificate of Incorporation.
2. Ex. B2 is the Power of Attorney.
3. Ex. B3 is the copy of screen short evidencing the MRP of book – dated 25-03-2019.
4. Ex. B4 is the copy of the supply agreement executed between Penguin Random House India Private Limited and Flipkart India Private Limited

As the opposite party failed to establish the reasons as to why they have not printed the price of the book on the book supplied to the complainant, it clearly assumes adoption of unfair trade practice for which they are held liable for the same. With the above observations we answered these points in favor of the complainant and accordingly

ordered the opposite parties to print and publish the retail price on the product (Book) which they are being sold to the customers hereunder after.

POINT NO.4:-

In the result, the complaint is allowed in part, directing the opposite parties jointly and severally to:

1. Print and publish the retail price on the product (Books) which they are being sold to the customers herein after.
2. Pay Rs.10, 000/- (Rupees Ten Thousands only) towards compensation for mental agony and for unfair acts.
3. Pay Rs.2, 500/- (Rupees Two Thousands Five Hundred only) towards costs.
4. Rest of the claim of the complainant is dismissed.

Time for compliance is 30 days from the date of receipt of this order.

Dictated to Stenographer, Typed by him, corrected and pronounced by us in the open Forum to day the 28th day of January, 2020.

MALE MEMBER

LADY MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

Witnesses examined for complainant

Baglekar Akash Kumar (PW1)

Witnesses examined for Opp.party No.1:-

Mr. Sanjiv Gupta (DW1)

Exhibits marked on behalf of the Complainant:-

Ex. A1 is a copy of the Tax invoice.

Ex. A2 is a copy of the copies of the book where no price is mentioned.

Ex. A3 is a copy of the screen short of Snapdeal book.

Exhibits marked on behalf of the Opposite party No.1:-

Ex. B1 is a copy of the certificate of Incorporation.

Ex. B2 is a copy of the Power of Attorney.

Ex. B3 is a copy of the copy of screen short evidencing the MRP of book –
dated 25-03-2019.

Ex. B4 is a copy of the supply agreement executed between Penguin Random
House India Private Limited and Flipkart India Private Limited

MALE MEMBER

LADY MEMBER

PRESIDENT