

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

First Appeal No. A/16/431

(Date of Filing : 13 Jul 2016)

**(Arisen out of Order Dated 20/04/2016 in Case No. CC/469/2013 of District
Thiruvananthapuram)**

1. THE PROPRIETOR DHANYA REMYA THEATRE
COMPLEX

AYURVEDA COLLEGE THIRUVANANTHAPURAMAppellant(s)

Versus

1. Adv.RAVIKRISHNAN

MR 101 NSP NAGAR KESAVADASAPURAM
THIRUVANANTHAPURAM 04

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN PRESIDENT

HON'BLE MR. SRI.T.S.P.MOOSATH JUDICIAL MEMBER

SRI.RANJIT.R MEMBER

SMT.BEENAKUMARIA MEMBER

SRI.RADHAKRISHNAN.K.R MEMBER

PRESENT:

Dated : 09 Apr 2021

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

APPEAL Nos. 431/2016 & 553/2016

COMMON JUDGMENT DATED: 09.04.2021

(Against the Order in C.C. 469/2013 of CDRF, Thiruvananthapuram)

PRESENT:

HON'BLE JUSTICE SRI. K. SURENDRA MOHAN : PRESIDENT

SRI.T.S.P. MOOSATH : JUDICIAL MEMBER

SRI.RANJIT. R : MEMBER

SRI. K.R. RADHAKRISHNAN

: MEMBER

APPEAL No. 431/2016

APPELLANT:

The Proprietor, Remya Theatre, Dhanya Remya Theatre Complex, Ayurveda College,
Thiruvananthapuram.

(By Adv. C.S. Rajmohan)

Vs.

RESPONDENT:

Adv. Ravi Krishnan, MR-101, N.S.P. Nagar, Kesavadasapuram, Thiruvananthapuram-4.

(Party in person)

APPEAL No. 553/2016

APPELLANT:

Ravi Krishnan N.R., Advocate, 101# N.S.P. Nagar, Kesavadasapuram,
Thiruvananthapuram-4.

(Party in person)

Vs.

RESPONDENT:

The Proprietor, Remya Theatre, Dhanya Remya Theatre Complex, Ayurveda College,
Thiruvananthapuram.

(By Adv. C.S. Rajmohan)

COMMON JUDGMENT

HON'BLE JUSTICE SRI. K. SURENDRA MOHAN : PRESIDENT

Both these appeals challenge the final order dated 20.04.2016 of the District Consumer Disputes Redressal Forum, Thiruvananthapuram (hereinafter referred to as the District Forum for short) in C.C. No. 469/2013. Appeal No. 431/2016 is filed by the opposite party aggrieved by the compensation granted to the complainant. Appeal No. 553/2016 is filed by the complainant who is not satisfied with the reliefs granted. The facts in these appeals fall within a narrow compass. For the sake of convenience, the parties shall be referred to as the complainant and opposite party in this judgment also.

2. On 28.10.2013 the complainant had gone to the cinema theatre of the opposite party for viewing an English 3 D movie, 'Gravity'. He had carried with him the 3D spectacles that he had purchased for Rs. 30/- on an earlier occasion, for the purpose of viewing another movie, 'Avatar'. At the theatre, he saw a board near the reserved class showing the ticket charge as Rs. 30 + 50. On enquiry, he came to know that the ticket charge was Rs. 50/- and Rs. 30/- was being charged as rent for the 3D spectacles supplied by the opposite party. There were notice boards intimating the viewers that the spectacles should be returned after the movie. Since he already had his own spectacles with him, the complainant requested for the issue of a ticket to him. However, the person who was issuing the tickets refused to give a ticket for Rs. 50/-. Therefore, as insisted by him the complainant was forced to pay an additional amount of Rs. 30/- towards rent of the spectacles. According to the complainant, the spectacles were found to be kept in a plastic cover after use and were being issued to the viewers of the next show, without any cleaning or sterilisation. He also complained that no bill was given to him for payment of the amount of Rs. 30/- collected as rent for the spectacles. He further contended that, the spectacles necessary for viewing 3D movies were given free of cost, on earlier occasions when films like "My Dear Kuttichathan" were screened. The complainant therefore alleged that the charging of Rs. 30/-, more than half of the ticket charge, as rent for the spectacles amounted to restrictive trade practice, actionable in law. He therefore approached the District Forum claiming a compensation of Rs. 5,000/-, refund of the amount of Rs. 30/- with interest @ 18% per annum from 28.10.2013 and costs of Rs. 5,000/-. A further order restraining the opposite party from continuing the restrictive trade practice was also sought.

3. The complaint was contested by the opposite party by filing written version. According to their version, purchase of ticket would not prove that the complainant was present in the theatre to view the movie. It is for the protection of the eyes that special spectacles are issued to the viewers along with the tickets. The same was to be returned after viewing. The opposite party has no knowledge as to whether the complainant had viewed the movie. No instance of any one requesting for viewing the movie without purchasing the spectacles was also brought to the notice of the opposite party. The opposite party had not compelled any one to take the 3D glasses on rent. The 3D glasses collected after each show are subjected to a sterilization process and reused only after sterilization. It is not necessary to issue a bill for supplying 3D glasses on rent. No negligence or deficiency in service was committed by the opposite parties. Therefore, they disputed the liability of paying compensation.

4. The parties went to trial on the above pleadings. The complainant examined himself as PW1 and marked Ext. P1 to P3 documents. The Manager of the opposite party was examined as DW1.

5. After close of the evidence, the matter was heard. On a consideration of the respective contentions of the parties in the light of the evidence on record, the District Forum found that the complaint was well founded. Therefore, an amount of Rs. 5,000/- as compensation, a further amount of Rs. 5,000/- as punitive damages and an amount of Rs. 2,000/- as costs have been ordered to be paid to the complainant. If the amounts were not paid within one month of the receipt of the order, the amount of Rs. 10,000/- is to carry interest @ 12% per annum. Both the complainant as well as the opposite party have filed these appeals against the said order, as already noticed above.

6. According to the counsel for the opposite party the finding of the District Forum that the opposite party was guilty of unfair and restrictive trade practice was without any justification. Exts. P1 & P2 produced by the complainant does not prove that he had viewed the 3D movie as contended by him. Ext. P3 CD has no evidentiary value and therefore cannot be relied upon for any purpose whatsoever. Therefore, in the absence of any evidence supporting the case of the complainant, no relief could be granted. The complainant had no case that he had sustained any injury consequent to the alleged incident. Therefore, the compensation granted was without any justification. The District Forum further erred in misinterpreting Sec. 14(1) (d) of the Consumer Protection Act, 1986 to grant punitive damages. For the above reasons, the order of the District Forum was only to be set aside.

7. According to the complainant who appeared in person Exts. P1 & P2 clearly proved that Rs. 50/- had been extracted from him as ticket charge and a further amount of Rs. 30/- as rent for the 3D spectacles. The above fact has been admitted by DW1 when he was cross examined. He had also admitted that no entertainment tax was paid with respect to the said amount. Since the amount collected was exorbitant the compensation awarded was fully justified. According to the complainant, in C.C. No. 169/2013 also the District Forum had found the opposite party to be indulging in similar restrictive trade practice as complained. Therefore, the award of punitive damages was fully justified. It is further contended that, the District Forum went wrong in ordering that the 3D spectacles would be made available only to customers who required them, on payment of charges. According to the complainant, the said order would only permit the opposite party to continue with the restrictive trade practice without any hindrance. Therefore he sought for setting aside the said portion of the order. He also contended that, costs should have been granted by the District Forum.

8. We have considered the contentions of the contesting parties anxiously. We have also gone through the records, carefully. Ext. P1 is the ticket issued by the opposite party to the complainant and Ext. P2 is the receipt issued for charging the parking fee for his two-wheeler. The said documents no doubt substantiate the contention of the complainant that he had gone to the theatre of the opposite party to view the movie as contended. The conversation that he had with the person who was manning the ticket counter is contained in Ext. P3 CD. He has also produced as MO1 the 3D spectacles that he had carried with him. As rightly found by the District Forum, DW1 has admitted that the ticket charge of Rs. 50/- and rent for the spectacles Rs. 30/- were being collected from the persons who came to view the movie. Therefore, it is an admitted case that Rs. 30/- was being collected as rent for making available the 3D spectacles. As rightly found by the District Forum it is clear from an examination of MO1 spectacles that the same is not of high quality or value. Therefore extracting an amount of Rs. 30/- as rent for similar spectacles can only be termed as excessive exploitation. Though the opposite party has a contention that their spectacles were of better quality, no evidence to support the said contention is available. Therefore, the finding of the District Forum that charging of Rs. 30/- as rent for the 3D spectacles was unjustified, cannot be found fault with. Though there is a dispute that the spectacles were

being reused without sterilization or cleaning, there is no evidence on record to support the assertions made by either of the parties. It is worth noticing that even with respect to the manner in which the spectacles were cleaned or sterilized, no acceptable answer has been given by DW1. Rs. 30/- charged as rent for the 3D spectacles was admittedly being recovered over and above the ticket charges, for which no entertainment tax has admittedly been paid.

9. We find that the action of the opposite party in charging rent @ Rs. 30/- per 3D glasses made available for viewing the 3D movie amounts to a serious violation of the rights of the consumer. In the process, the opposite party would have extracted a tidy sum of money, without providing any consequential benefit to the consumer who has availed the use thereof. If 3D glasses are necessary for the better viewing of the 3D movie, it is imperative that the said glasses are supplied free of cost for the use of the viewers. Extraction of such amounts by individual theatre owners at their whims and fancies would only give room for exploitation of the consumers. We are, therefore, of the considered view that the amount of compensation and punitive damages granted by the District Forum are justified and reasonable. However, the direction of the District Forum that charges for use of the 3D glasses could be extracted from customers who require the glasses and that too after publishing a notice is without any justification, as contended by the complainant. Any such permission to extract additional charges would not be in the interests of the rights of the consumers whose stakes in such matters are very low. Most consumers may not consider it worthwhile to litigate for small amounts like Rs. 30/-. Therefore, the said direction is vacated.

In the result, the appeals are disposed of as follows:

1. A 431/2016 is dismissed.
2. A 553/2016 is allowed to the limited extent of vacating the direction issued by the District Forum to publish at the time of 3D shows a notice that the customers who require the glasses only have to pay for the same along with the ticket charges. If the 3D glasses supplied for viewing a movie are valuable, they should be issued to the customers without extracting any charges, on condition that they should be returned after the show.

1. There shall be no order as to costs.

JUSTICE K. SURENDRA MOHAN : PRESIDENT

T.S.P. MOOSATH : JUDICIAL MEMBER

RANJIT. R : MEMBER

K.R. RADHAKRISHNAN : MEMBER

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**[HON'BLE MR. JUSTICE SRI.K.SURENDRA MOHAN]
PRESIDENT**

**[HON'BLE MR. SRI.T.S.P.MOOSATH]
JUDICIAL MEMBER**

**[SRI.RANJIT.R]
MEMBER**

**[SMT.BEENAKUMARIA]
MEMBER**

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**