

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
U.T., CHANDIGARH**

Appeal No.	:	31 of 2021
Date of Institution	:	05.04.2021
Date of Decision	:	04.08.2022

Ajay Kumar Sharma,

.....Appellant/Complainant.

Versus

- 1] Zomato Private Limited, Ground Floor, Tower C, Vipul Tech Square, Sector 43, Golf Course Road, Gurugram, Haryana through its CEO Deepinder Goyal.
- 2] Zomato Media Pvt. Ltd., Corporate Officer, SCO 201, Second Floor, Inner Market, Sector 7-C, Chandigarh through its Manager.

.....Respondents/Opposite Parties.

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

MR. RAJESH K. ARYA, MEMBER

ARGUED BY :-

Sh. Naveen Kaushik, Advocate for the appellant.

Sh. Harkaran Singh, Advocate for the Respondents (already exparte vide order dated 19.08.2021).

PER RAJESH K. ARYA, MEMBER

This appeal has been filed by the complainant, namely, Sh. Ajay Kumar Sharma (appellant herein), against order dated 11.02.2021 passed by the District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short 'District Commission'), whereby his consumer complaint bearing No.55 of 2021 has been dismissed at the preliminary stage by the Ld. District Commission.

2. The case of the complainant (appellant herein), namely, Sh. Ajay Kumar Sharma, before the Ld. District Commission was that on 06.03.2020 at around 10:16 p.m., he online ordered Italy Treat Pizza etc. costing Rs.234/- for his children and made total payment of Rs.287.70 through Paytm inclusive of taxes and Rs.10/- for on time or free. However, the respondents failed to deliver the order till 10:30 p.m. and thereafter, the appellant received a message that the order is declined, refund process was initiated and the amount was to be refunded in two business days. The appellant also complained to Chief Commissioner, Consumer Protection Authority, New Delhi. No doubt, the amount was refunded but the appellant prayed for directing the respondents to either fulfill their promise or take back their promotional advertisement "KABHI TO LATE HO JAATA" and further sought compensation for harassment etc. Alleging unfair trade practice on the part of the respondents, the appellant filed complaint before the District Commission, which it dismissed at the preliminary stage.

3. Notice of appeal was duly served upon the respondents through email on 29.07.2021 and when they did not appear on 19.08.2021 despite due service, they were proceeded against exparte on 19.08.2021 itself. However, on the next date of hearing i.e. 16.11.2021, Sh. Harkaran Singh, Advocate appeared on behalf of the respondents and sought time to file appropriate application before Hon'ble National Consumer Disputes Redressal Commission, New Delhi for setting aside order date 19.08.2021. On subsequent date i.e. 27.01.2022, he submitted that the respondents have challenged the order dated 19.08.2021 before Hon'ble National Commission and placed on record information regarding the same. The parties also probed the chances of compromise but to no avail. Since written arguments on behalf of the parties were filed, therefore, on the basis of those written arguments and after hearing the oral arguments advanced by the Ld. Counsel for the parties, the matter was reserved for orders on 29.07.2022.

4. The order of Ld. District Commission, dismissing his complaint, has been assailed by the appellant on the ground that the finding given by the Ld. District Commission that the process of refund was initiated just after around 15 minutes is totally off the record because as per the message received, the order was cancelled and refund of the money was to be made up to 2 business days to process the refund. It has further been stated by the appellant that his case falls under unfair trade practice as defined in Section 2(1)(47) of Consumer Protection Act as the respondents despite charging Rs.10/- extra from their customer for the scheme "ONTIME OR FREE", failed to deliver in time the Italian Pizza and thus, indulged into unfair trade practice by publishing misleading advertisement and are thus, liable to be penalized for this very act of theirs. Lastly prayer for setting aside of the impugned order has been made.

5. On the other hand, Ld. Counsel for the respondents during the pendency of the present appeal sought time to seek instructions from the respondents so that matter could be compromised between the parties by offering a free meal to the appellant. On the day of final hearing of the matter, he informed that he did not receive any instructions in this regard from the respondents and the matter be decided on merits.

6. After hearing the Ld. Counsel for the parties and going through the material available on record and the written arguments very carefully, we are of the considered opinion that the appeal is liable to be accepted and the impugned order is liable to be set aside for the reasons to be recorded hereinafter. It is a clear cut case of admission on the part of the respondents that despite charging an amount of Rs.287.70 for Italy Treat Pizza etc. as ordered by the appellant, they failed to deliver the same on time and that too

when it were late hours i.e. near about 10:30 p.m. Bare perusal of 'On-Time or Fee' campaign launched by Zomato, Annexure C-1, transpires that in the said document, it was specifically mentioned by the respondents that "...Zomato users will now get their food guaranteed on time or get their money back." However, they failed to keep their assurance given in Annexure C-1 and cancelled the order of the appellant on their own. It is not the case that delivery was made late. Had it been the case of the respondents, the matter would have been different but in the instant case, they cancelled the order of the appellant on their own without giving it a single thought that how the said cancellation would affect the appellant both mentally and physically. Thus, the appellant was deprived of food at late night hours, which he specifically ordered for his children. The feelings of the appellant would have definitely got hurt, when he came to know about the cancellation of the order by the respondents on their own and at that time, how he would have, with heavy heart, told the same to his children who were already waiting for the meal at late night hours. Had there been any difficulty in delivering the item at the relevant time, the respondents should not have made the booking, which they later-on cancelled. Thus, grave deficiency in rendering service is attributable on the part of the respondents on this account.

7. Not only above, when the respondents charged Rs.10/- extra for 'On-time or Free' campaign launched by them from the appellant, they were expected to deliver the same on time and in not doing so and simultaneously, cancelling the order on their own amounted to deficiency in rendering service and unfair trade practice on their part. In case, they were not able to deliver food items timely as per the 'On-time or Free' campaign, then, they should not have charged Rs.10/- extra for the same, which further contributed to unfair trade practice on their part. In given circumstances, we are of the concerted view that such like alluring advertisement or campaigns should not have been published or launched by the respondent, in case, they cannot fulfill the same.

8. In view of foregoing discussion, we are of the considered opinion that the Ld. District Commission has wrongly dismissed the complaint of the appellant without going into the factual position on record. For deficiency in rendering service and for indulgence into unfair trade practice on the part of the respondents and also for suffering immense physical harassment & mental agony, the respondents are liable to compensate the appellant. In our concerted view, consolidated compensation on aforesaid counts and also for litigation expenses, if granted in the sum of Rs.10,000/- that would meet the ends of justice.

9. For the reasons recorded above, the appeal is accepted. The impugned order dated 11.02.2021 is set aside. Consumer Complaint No.55 of 2021 is partly accepted with cost. The respondents/opposite parties, jointly and severally, are directed as under:-

(a) to provide/deliver one free meal to the appellant/complainant within a period of 30 days from the date of receipt of certified copy of this order,

(b) to pay a consolidated amount of Rs.10,000/- to the appellant/complainant towards compensation for deficiency in rendering service, unfair trade practice and litigation expenses within a period of 30 days from the date of receipt of certified copy of this order failing which, the said amount shall carry interest @9% per annum (simple) from the date of passing of this order till actual realization.

10. Certified copies of this order be sent to the parties free of charge.

11. File be e consigned to Record Room after completion.

Pronounced.

04.08.2022.

[RAJ SHEKHAR ATTRI]

PRESIDENT

(RAJESH K. ARYA)

MEMBER

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