

IN THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**KOLLAM****C.C.No. 130/2023****PRESENT****SMT. S.K.SREELA, B.A.L, LL.B, PRESIDENT****SRI. STANLY HAROLD, B.A.LL.B, MEMBER****ORDER DATED: 28.10.2023****BETWEEN**

**Shemin A.S., 36 years,
S/o Abdul Sathar,
ShiyasManzil, Parakkulam,
Umayanalloor P.O.,
Kollam 691589
AND**

: Complainant

- 1. The Manager,
Chicking, Sans Building,
Kottiyam, Kollam.**
- 2. The Director,
Chicking, 3rd Floor,
Veerath Complex, Palarivattom,
Ernakulam.**

: Opposite Parties**ORDER****S.K.SREELA, PRESIDENT**

1. The complainant, a practising advocate in Kollam District court, has filed this complaint regarding a purchase made on 16th October 2022. The complaint states that, the complainant bought a parcel of food items from the 1st opposite party. In addition to the Rs.590/- cost of the food items, the 1st opposite party charged an extra Rs.20/- as packing charges. When the complainant inquired about these charges with a billing staff member, who also served as the cashier in charge, he received a careless response. The staff member mentioned that such charges were common in their branch and that other branches across Kerala, collected according to the company's norms. The complainant expressed concern about the company's responsibility to provide customer satisfaction and pleads against the collection of packing charges or

any additional fees apart from GST. That in an attempt to resolve the issue, the complainant filed a pre-litigation petition before the Hon'ble Taluk Legal Services Committee at Kollam. However, due to the non-settlement of disputes and the non-appearance of the 2nd opposite party, the complainant served an advocate notice to both opposite parties. Despite providing ample opportunities, there was no response from either side, and neither party attempted to resolve the matter.

2. The complainant alleges a clear violation of consumer rights, describing the actions of the opposite parties as unfair trade practices and a deficiency in service. The complaint seeks compensation and the refund of the Rs.20/- collected as packaging charges, along with interest.

3. In response to the allegations raised in the complaint, the 1st opposite party appeared in person and submitted their version, contending as follows: The 1st opposite party and the shop are mere franchisees operating under the umbrella of the Chicking company. That their operations are carried out in strict adherence to the instructions and guidelines provided by the Chicking company. The practice of levying packing charges is not a decision made at the franchisee level. It is a uniform policy implemented by the Chicking company across all its outlets throughout Kerala. The decision-makers in this regard are the authorized employees and representatives of the Chicking company. That the decisions regarding packing charges and related policies are beyond the control of the 1st opposite party as a franchisee. 1st opposite party hence prays to exempt the 1st opposite party, from any liabilities in this matter.

4. In response to the notice issued by this Commission, it is noted that while the 2nd opposite party acknowledged receipt of the notice, they failed to appear before the Commission and neglected to file their version. Consequently, they were proceeded against ex parte.

5. In the course of proceedings, both the complainant and the 1st opposite party submitted their proof affidavits. The complainant presented

documentary evidence which were marked as Exhibits P1 to P5. The 1st opposite party had no documentary evidence.

6. Based on the allegations outlined in the complaint, the following issues are raised:

- i. *Whether there has been any deficiency in service and unfair trade practice on the part of the opposite parties, if so, which opposite party is liable to compensate the complainant.*
- ii. *Whether the complainant is entitled to the claimed reliefs?*
- iii. *Reliefs and costs.*

7. Points i to iii: The complainant in this case, being an advocate, emphasizes the duty of the seller to ensure that the food products sold are in a deliverable condition.

8. The complainant argues that, it is the duty of the seller to ensure that the food is in a deliverable condition, such as proper packaging, handling, and transportation to maintain the integrity of the product until it reaches the consumer and that sellers cannot ask consumers to bear the expenses related to ensuring the deliverable condition of the food.

9. When a consumer makes a purchase, there is an implied warranty of merchantability and agreement that the seller will provide the product in a condition suitable for its intended use. This agreement includes the reasonable expectation that the seller will cover any costs related to ensuring the deliverable condition of the product, such as appropriate packaging.

10. In support of the complainant's contentions, the learned counsel relied on the decision of the District Commission, Panchkula in ***Ms. Sapna Vasudev Vs. Hot Millions Restaurant***, in C.C.No.32/2018 dated 17.12.2018, wherein it has been found as follows;

"....We find no reasonable and plausible justification for the opposite party to charge the amount on account of packing when the food items are delivered from the cash counter of the restaurant, whereas nothing

on account of packing material is charged by the opposite party while the delivery of food items is made at the very doorstep of its customers...”.

11. Consumers have a right to expect that the products they purchase, especially essential items like food, meet certain standards and are free from defects that could compromise their safety or usability. The seller cannot pass on expenses, specifically relating to packing charges, to the consumers. The tax invoice marked as Exhibit P1 further supports this argument. Exhibit P1, serves as evidential proof that an amount of Rs. 20 has been levied from the complainant as packing charges.

12. Charging packing charges is considered a part of the seller's responsibility to deliver the product in a condition suitable for consumption. Consumers should not be burdened with additional expenses beyond the cost of the product itself.

13. In conclusion, the complainant, as an advocate, justifies the position that sellers, including those in the food industry, bear the responsibility to ensure the quality, safety, and deliverable condition of the products they sell, without passing on related expenses to consumers. The opposite parties are responsible for covering the costs of packaging and cannot pass these expenses to the consumers.

14. Hence this Commission finds that the practice of the opposite parties in charging restaurant packing charge amounts to an unfair trade practice on their part.

15. The 1st opposite party asserts their status as sole franchisees and contends that pricing is solely determined by the company Chicking, the 2nd opposite party herein. The consistent failure of the 2nd opposite party to appear before the Commission and justify their practice of collecting packing charges raises significant concerns. Under these

circumstances, it becomes apparent that the 2nd opposite party has engaged in an unfair trade practice by collecting packing charges, as discussed *supra*. This situation further implies an unfair trade practice and deficiency in service on the part of the 2nd opposite party due to their lack of transparency and failure to address the issue, contributing to the overall violation of consumer rights and ethical business practices.

16. At this juncture, it is imperative to consider Section 86 (a), which delineates the liability of product sellers in a product liability action. *Section 86(a) states that a product seller, who is not a product manufacturer, shall be held liable in a product liability action if:*

(a) If the product seller has exercised substantial control over the designing, testing, manufacturing, packaging, or labelling of a product that caused harm;

17. This provision underscores the accountability of a product seller who, assumes significant control over various stages of the product's development and distribution. In the context of the present case, the examination of Section 86 (a) becomes crucial to ascertain whether the 1st opposite party, as a product seller, exercised substantive control over aspects such as packaging, of the product in question, which has led to the harm alleged by the complainant.

18. In light of the fact that the 1st opposite party remains a franchisee, they bear a bounden duty to address consumer complaints and concerns. Furthermore, the absence of documentary evidence from the 1st opposite party to substantiate the claim that it is the 2nd opposite party responsible for fixing packing charges raises doubts about the veracity of their assertion. Considering these circumstances, the act of collecting packing charges, as alleged by the complainant, is deemed an unfair trade practice. This not only points to a deficiency in service on the part of the 1st opposite party, as they failed to adequately address consumer concerns, but it also underscores a joint responsibility of both opposite parties in engaging in

practices that contravene fair business standards. The lack of documentation supporting the claim that the 2nd opposite party determines packing charges further strengthens the inference that both parties are collectively involved in this unfair trade practice. Consequently, the joint responsibility for the deficiency in service arises from the failure to rectify the consumer complaint and the absence of conclusive evidence demonstrating the 2nd opposite party's role in fixing packing charges.

19. In the result, the complaint is allowed. The opposite parties are directed to jointly and severally refund to the complainant the sum of Rs.20/- collected towards packing charges, along with an amount of Rs.15,000/- as compensation for the sufferings endured due to the deficiency in service and unfair trade practice on the part of the opposite parties and an amount of Rs.5000/- towards costs of the proceedings. Time for compliance 30 days from the date of acceptance of the copy of the order failing which the entire amount shall carry interest at 12% from the date of order till realisation.

Dictated to the Confidential Assistant Smt. Minimol S. transcribed and typed by her corrected by me and pronounced in the Open Commission this the 28th day of October 2023.

Sd/-
S.K.SREELA
PRESIDENT
Sd/-
STANLY HAROLD
MEMBER
Forwarded/by Order

Senior superintendent

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Witnesses Examined for the Complainant:-Nil

Documents marked for the complainant

Ext.P1 : Photocopy of the tax invoice
Ext.P2 : Photocopy of PLP petition
Ext.P3 : Copy of Advocate notice
Ext.P4 : Copy of Postal Receipt
Ext.P5 : Copy of Acknowledgment card

Witnesses Examined for the opposite party:-Nil
Documents marked for opposite party:-Nil

Sd/-

PRESIDENT