

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/22/173
(Date of Filing : 22 Mar 2022)**

1. SANJAY RAJ

RAMAS HOUSE KANATHUR P.O MULIYAR VIA,
KASARGOD ,KERALA

.....Complainant(s)

Versus

1. BINESH CHACKO

ERNAKULAM BROADWAY.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. D.B BINU PRESIDENT

HON'BLE MR. RAMACHANDRAN .V MEMBER

HON'BLE MRS. SREEVIDHIA T.N MEMBER

PRESENT:

Dated : 16 Aug 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this 16th day of August 2024

Filed On: 22/03/2022

PRESENT:

Shri. D.B. Binu

President

Shri. V. Ramachandran

Member

Smt. Sreevidhia. T.N.

Member

C.C. No. 173/2023

Complainant:

Sanjay Raj, S/o. K.P Jayarajan, RAMAS House, Kanathur PO, Muliya VIA. Kasaragod, Kerala
671542

V/s

Opposite Parties:

1. BINESH CHACKO, Bata Showroom X/1035BROADWAY ERNAKULAM.
2. Chief Manager, Bata India Ltd. 418/02, Bata House Sector 17, Opposite MDI Gurugram 122001 Haryana.

FINAL ORDER**D.B. Binu, President:****1. A brief statement of facts of this complaint is as stated below:**

The Complaint filed under Sec. 35 of the Consumer Protection Act 2019. The complainant, a student at Government Law College, Ernakulam, visited the Bata showroom on Broadway, Ernakulam, on 16th March 2022, along with two friends, to purchase a pair of black shoes. The MRP printed on the shoes was Rs 999/-, but the complainant was charged Rs 1066/-. Upon realizing the discrepancy, the complainant returned to the store and inquired about the overcharge. The store manager informed them that the government had allowed the collection of sales tax above the MRP for items sold after 1st January 2022. The manager further insulted the complainant and his friends for their lack of awareness of this "big news," despite being law students.

The complainant noted that the shoes were old stock, as evidenced by the unchanged MRP of Rs 999/-. However, despite this, an amount exceeding the MRP was charged. Moreover, the same shoes were found to be sold for Rs 549/- on Amazon, indicating a significant price difference.

Additionally, the shoes were handed to the complainant in a polythene cover without a proper box, further diminishing the experience. When the complainant requested a refund due to the poor fit of the shoes, the request was denied, and they were told to wear thinner socks instead. This response aggravated the complainant's distress, as they could not afford another pair of shoes and were unable to present themselves in full uniform for their internship program, negatively affecting their performance and causing severe mental agony.

The complainant has filed this complaint against the Bata showroom for overcharging above the MRP, selling old stock without reducing the price, denying refunds, and causing mental distress. The complainant seeks compensation of Rs 1,00,000/- for the damages incurred, including mental agony, breach of trust, spreading misinformation, and litigation costs.

2. NOTICE:

The Commission issued notice to the opposite party, but they failed to file their version within the statutory period and were consequently set ex-parte.

3. Evidence:

The complainant submitted a proof affidavit along with six documents. The documents in the complaint are marked as Exhibits A1 to A6:

- Exhibit A1: Original purchase bill of the complainant's shoe
- Exhibit A2: Copy of the photograph of the complainant's shoe showing the MRP marking
- Exhibit A3: Copy of the complainant's shoe tag displaying the manufacturing date
- Exhibit A4: Original purchase bill of the complainant's friend's shoe
- Exhibit A5: Copy of the photograph of the complainant's friend's shoe showing the MRP marking
- Exhibit A6: Copy of the complainant's friend's shoe tag displaying the manufacturing date.

4. Points for Consideration:

The main points to be analyzed in this case are as follows:

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- ii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iii) Costs of the proceedings, if any?

5. SUMMARY OF WRITTEN ARGUMENTS OF THE COMPLAINANT

a. The complainant visited the Bata showroom located on Broadway, Ernakulam, to purchase black shoes, accompanied by two friends. Although the MRP on the shoes was Rs 999/- (as evidenced by Annexure A2), the complainant was charged Rs 1066/- (as shown in Annexure A1). Upon discovering the discrepancy, the complainant returned to the store to inquire. The store manager claimed that the government had permitted them to charge sales tax above the MRP for all items sold after 1st January 2022. The manager further insulted the complainant and friends for their supposed ignorance of this information, despite being law students.

b. The purchased shoes were marked with an MRP of Rs 999 and were old stock. Despite this, the complainant was charged more than the MRP without the price being updated on the shoes. When checked on Amazon, the same shoe model was being sold for Rs 549, clearly indicating a significant price discrepancy due to the old stock. Moreover, the shoes were handed over in a polythene cover instead of a proper box.

c. On the same day, the complainant's friend purchased a different pair of shoes, also manufactured in 2021, with an MRP of Rs 599 (as shown in Annexures A4 and A5). This pair was sold at the exact MRP without any additional charges, despite the same manufacturing period, thereby contradicting the store's claimed policy of charging additional GST.

d. When the complainant requested a refund due to the shoes being tight, the request was refused, and the complainant was dismissively told to wear thinner socks. This caused further distress, as the complainant could not afford another pair of shoes, leading to difficulties in attending an internship in full uniform, thereby affecting performance and causing significant mental anguish.

e. The above facts clearly demonstrate negligence and deceit on the part of the opposite parties, causing mental harassment and distress to the complainant by charging more than the MRP and refusing a refund.

f. Given the facts and circumstances, the complainant is entitled to relief for the deceitful and illegal trade practices employed by the opposite party. The complainant respectfully requests that the commission award the relief claimed, totalling Rs.1,05,000/- (One lakh five thousand rupees only), along with costs, to serve the interests of justice.

6. SUMMARY OF WRITTEN ARGUMENTS OF THE OPPOSITE PARTIES.

The opposite parties contend that the complaint is not maintainable and should be dismissed as no deficiency in service or unfair trade practice has been established. They argue that the proper legal entity, M/s Bata India Limited, with its registered office in West Bengal, has not been made a party to the complaint, rendering it invalid for misjoinder and non-joinder of necessary parties. The opposite party cites relevant Supreme Court rulings to support this argument.

They also assert that the increase in the price of the shoes was due to the revision in GST rates from 5% to 12% for footwear under Rs. 1000, as per a Central Government notification effective from 1st January 2022. The opposite party claims they have complied with all legal requirements under the Legal Metrology (Packaged Commodities) Rules, 2011, including publishing notices in newspapers and notifying dealers and government authorities about the revised MRP.

The opposite party highlights a precedent from the District Consumer Redressal Commission, Bangalore, where a similar complaint against Bata was dismissed, as the price increase was in line with the legal requirements. They argue that there is no deficiency in service or unfair trade practice in this case either, as the revised MRP was appropriately communicated and applied.

Finally, the opposite parties challenge the territorial jurisdiction of the Commission, stating that the terms and conditions of the purchase specify that disputes should be addressed in courts at Delhi/New Delhi. They conclude that the complaint should be dismissed in the interest of justice.

We have carefully heard the submission made at length by representing the complainant and have also considered the entire evidence on record including the argument notes filed by both parties.

The complainant initiated legal action to seek redress for the deficiencies in service and the engagement in unfair trade practices by the opposite parties. The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. The opposite party's conscious failure to file their written version despite having received the Commission's notice amounts to an admission of the allegations levelled against them. The case of the complainant stands unchallenged by the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

i). Maintainability of the Complaint:

Under Section 2(7) of the Consumer Protection Act, 2019, the complainant qualifies as a consumer, having purchased goods from the opposite party. The complaint was filed within the prescribed limitation period and complies with all procedural requirements of the Act. The complainant provided sufficient evidence, including the original purchase bill (**Exhibit A1**), proving his consumer status and the transaction with the opposite parties. Hence, the complaint is maintainable.

ii). Deficiency in Service and Unfair Trade Practice:

The complainant has established that the MRP of the shoes was Rs 999/-, yet he was charged Rs 1066/-. The opposite party's justification that the government allowed the collection of sales tax above MRP for items sold after 1st January 2022 is flawed. The Legal Metrology (Packaged Commodities) Rules, 2011, under Rule 18(3), mandate that no retail sale of a commodity can exceed the MRP, even after a tax revision. The opposite party's failure to update the MRP on the product and instead charge an additional amount is a clear violation of these rules, constituting an unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019.

Moreover, the rude behaviour and refusal to provide a refund or a proper packaging box, further demonstrate negligence and deficiency in service, causing mental agony to the complainant.

The cited judgment from the Hon'ble Bihar State Consumer Disputes Redressal Commission in the case of *Nagneshwar Sharma vs. Titan Industries Limited & Ors.*, emphasizes the fundamental principle that charging a price higher than the Maximum Retail Price (MRP) is a clear violation of the Legal Metrology Act, 2009, and the Consumer Goods (Mandatory Printing of Cost of Production and Maximum Retail Price) Act, 2006. Such actions are deemed as unfair trade practices under both the Consumer Protection Act, 1986, and the Consumer Protection Act, 2019.

The judgment reiterates that any instance where a seller charges a price exceeding the MRP constitutes a deficiency in service, thus making the seller liable under the consumer protection laws. The Commission in this case underscored that even a nominal overcharge, such as Rs. 1 above the MRP, is sufficient to establish unfair trade practice. The rationale is that MRP is the maximum price set by law to protect consumers, ensuring they are not exploited. Any breach of this ceiling is not only a legal violation but also a breach of trust, warranting redressal through Consumer Commissions.

In the case at hand, the complainant's grievance is grounded in the same principles. The opposite party's action of charging an amount over the MRP is a direct violation of the above-mentioned laws and clearly constitutes an unfair trade practice. Furthermore, the refusal to refund the excess amount and the manner in which the complainant was treated exacerbate the situation, adding to the mental agony and breach of trust experienced by the complainant.

Given this legal precedent and the statutory framework, it is evident that the opposite party's actions in charging an amount above the MRP, coupled with their refusal to rectify the issue, constitute a clear case of deficiency in service and unfair trade practice. The complainant is thus entitled to relief under the Consumer Protection Act, 2019.

The observation in *Nagneshwar Sharma vs. Titan Industries Limited & Ors.* also reflects the broader judicial approach towards such cases, where consumer protection is given paramount importance, and any act that infringes on consumer rights is met with strict legal consequences.

The decision to enhance compensation in the Bihar case further highlights the judiciary's recognition of the need to adequately address the wrongs faced by consumers.

In conclusion, the judgment serves as a crucial reference point in the present case, affirming the complainant's right to seek compensation and holding the opposite parties accountable for their unfair trade practices and the resultant mental agony and inconvenience caused.

iii). Entitlement to Relief:

Given the established deficiency in service and unfair trade practices, the complainant is entitled to relief. The complainant has claimed compensation for mental agony, harassment, and breach of trust.

vi). Costs of the Proceedings:

Considering the conduct of the opposite parties, who failed to respond despite being notified, and the ex-parte proceedings, the complainant should be awarded the costs of litigation.

In dealing with this case, the Commission cannot help but reflect on the profound impact that even seemingly small injustices can have on an individual's sense of trust and well-being. The complainant, a young law student, placed faith in a well-known brand, only to be met with overcharging, dismissive behaviour, and a lack of empathy when he sought redress. This experience goes beyond a mere financial loss—it strikes at the heart of what it means to be a valued customer. When a consumer is treated unfairly, it can lead to feelings of frustration, helplessness, and even mental distress. It is a reminder to all businesses that their responsibility extends beyond transactions to include treating each customer with dignity and respect, recognizing the human element in every interaction. The complainant's perseverance in seeking justice speaks to the importance of protecting consumer rights and the emotional toll that can result from negligent and unfair practices.

We determine that issue numbers (I) to (IV) are resolved in the complainant's Favor due to the significant service deficiency and the unfair trade practices on the part of the opposite parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The opposite parties are directed to refund ₹67/- (Rupees Sixty-Seven Only) to the complainant, being the amount collected in excess of the MRP on the product.
- II. The opposite parties shall pay ₹10,000/- (Rupees Ten Thousand Only) to the complainant as compensation for mental agony and breach of trust. This amount is awarded for the deficiency in service and unfair trade practices endured by the complainant.
- III. The opposite parties shall pay ₹5,000/- (Rupees Five Thousand Only) towards the cost of the proceedings.

The opposite parties are jointly and severally liable for the fulfilment of the above orders, which must be executed within 45 days from the date of receiving this order. Failure to comply with the payment orders under points I and II will result in interest at the rate of 9% per annum from the date of filing the complaint (22.03.2022) until the date of full payment realization.

Pronounced in the Open Commission this the 16th day of August, 2024.

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Assistant Registrar

APPENDIX

COMPLAINANT'S EVIDENCE

Exhibit A1: Original purchase bill of the complainant's shoe

Exhibit A2: Copy of the photograph of the complainant's shoe showing the MRP marking

Exhibit A3: Copy of the complainant's shoe tag displaying the manufacturing date

Exhibit A4: Original purchase bill of the complainant's friend's shoe

Exhibit A5: Copy of the photograph of the complainant's friend's shoe showing the MRP marking

Exhibit A6: Copy of the complainant's friend's shoe tag displaying the manufacturing date.

OPPOSITE PARTY'S EVIDENCE

Nil

Despatch date:

By hand: By post

kp/

CC No. 173/2022

Order Date: 16/08/2024

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**