

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 975 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. ASHOK KUMARRespondent(s)

REVISION PETITION NO. 976 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. SANTOSH KUMARIRespondent(s)

REVISION PETITION NO. 977 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. BHARAT DAWARRespondent(s)

REVISION PETITION NO. 978 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. BALDEV RAJRespondent(s)

REVISION PETITION NO. 979 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. SARITA KUMARIRespondent(s)

REVISION PETITION NO. 980 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. SAHIL DAWARRespondent(s)

REVISION PETITION NO. 981 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. SAHIL DAWARRespondent(s)

REVISION PETITION NO. 982 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. ASHOK KUMARRespondent(s)

REVISION PETITION NO. 983 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. SOURAV KUMARRespondent(s)

REVISION PETITION NO. 984 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. BHARAT DAWARRespondent(s)

REVISION PETITION NO. 985 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)
Versus

1. SARITA KUMARIRespondent(s)

REVISION PETITION NO. 986 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission

Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. SANTOSH KUMARIRespondent(s)

REVISION PETITION NO. 987 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. BALDEV RAJRespondent(s)

REVISION PETITION NO. 988 OF 2020

(Against the Order dated 18/05/2020 in Appeal No. 238/2019 of the State Commission
Chandigarh)

1. BIG BAZAAR (FUTURE RETAIL LTD.)Petitioner(s)

Versus

1. BHARAT DAWARRespondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Petitioner : Mr. Sudhir K. Makkar, Sr., Advocate along
with Ms. Saumya Gupta, Advocate and Ms. Yogita Rathore, Advocate

For the Respondent :

Dated : 22 Dec 2020

ORDER

ORDER

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

Taken up through video conferencing .

1. These fourteen (14) Revision Petitions have been filed in challenge to the Order dated 18.05.2020 of The State Consumer Disputes Redressal Commission, U.T., Chandigarh (the 'State Commission') in Appeals No. 238, No. 239, No. 240, No. 243, No. 244, No. 246, No. 247, No. 248, No. 250, No. 274, No. 275, No. 276, No. 277 and No. 300 of 2019, arising out of the Orders dated 02.09.2019 in C.C. No. 124 of 2019, dated 03.09.2019 in C. C. No. 125 of 2019, dated 04.09.2019 in C. C. No. 126 of 2019, dated 05.09.2019 in C. C.s No. 89 of 2019, No. 181 of 2019, No. 90 of 2019, No. 179 of 2019, dated 17.09.2019 in C.C. No. 218 of 2019, dated 16.10.2019 in

C.C. No. 224 of 2019, No. 223 of 2019, dated 17.10.2019 in C.C. No. 162 of 2019 and dated 18.10.2019 in C.C. No. 199 of 2019 of The District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (the 'District Forum').

2. Heard arguments on admission from Mr. Sudhir K. Makkar, learned senior Counsel assisted by Ms. Saumya Gupta, learned Counsel for the Petitioner.

Perused the material on record including *inter alia* the Orders of the District Forum, the impugned Order dated 18.05.2020 of the State Commission and the Petition.

3. These fourteen (14) Petitions have been filed against a common order (the Order dated 18.05.2020) of the State Commission, similar facts and same questions of law are involved.

As such, the fourteen (14) Petitions are being disposed of vide the instant common order, with the Revision Petition No. 975 of 2020 being taken as the lead-case.

Revision Petition No. 975 of 2020

4. The Petitioner, Big Bazaar (Future Retail Ltd.) was the Opposite Party before the District Forum (the 'Opposite Party Co.').

The Respondent, Mr. Ashok Kumar, was the Complainant before the District Forum (the 'Complainant').

5. The Petition has been filed with self-admitted delay of 60 days. The stated reasons for delay, as contained in the application for condonation of delay, point towards managerial inefficiency and perfunctory and casual attitude to the law of limitation, they are illogical and unpersuasive in explaining convincingly and cogently the delay in filing the revision.

However, in the interest of justice, to provide fair opportunity to the Opposite Party Co., to settle the matter on merit, the delay is condoned.

6. The short point involved is that charging additional cost (Rs. 18/- in this case) for carry bag(s), to carry the goods purchased by the Complainant, has been held by the two Fora below, the District Forum and the State Commission, to be deficiency and unfair trade practice on the part of the Opposite Party Co.

7. The Complaint was instituted before the District Forum under Section 12 of The Consumer Protection Act, 1986 (the 'Act 1986').

The District Forum heard both sides, made its appraisal of the evidence, and, vide its Order dated 05.09.2019, determined deficiency and unfair trade practice on the part of the Opposite Party Co.

It ordered the Opposite Party Co. to refund the cost of the carry bag(s) and pay compensation of Rs. 100/- and cost of litigation of Rs.1100/- to the Complainant and to deposit Rs. 5000/- in the Consumer Legal Aid Account of the District Forum. The Order was to be complied with within one month, failing which the amounts awarded will carry interest @ 9% per annum from the date of the Order till realisation / deposit.

The District Forum's findings are summed-up in paras 6, 7 and 8 of its Order, which are reproduced below for ready appreciation:

6. The factum of charging additional price for providing carry bags to its customers has not been disputed by the OP. The argument put forward by the OP is that the rates and photographs of the carry bags are displayed at various display boards in the store and the carry bags are sold on no profit no loss basis and the consumers are requested to carry their own bags and that a separate charge would be payable in case the consumer wished to obtain a new carry bag. However, we are not impressed with this argument of the OP because the big stores like the OP never allowed the customers to carry bags in their hands within their store premises knowing very well that if they are allowed then the customers will not easily give their consent for the purchase of the carry bags. The OP is, therefore, taking advantage of its dominating position.

7. At any rate, the Opposite Party has miserably failed to produce on record any cogent, convincing and reliable piece of evidence in the shape of any rules / instructions authorizing it to levy charge additionally for the carry bag from the gullible Consumers. In this backdrop, charges of such things (carry bags) cannot be separately foisted upon the consumers and the same would amount to unfair trade practice on the part of the OP.

8. Besides this, if the Opposite Party claims itself to be responsible and environmentally conscious, then they should have given the carry bags to the customers free of cost because in our considered view, the price of the carry bag has generally been included by them in the profit margins of the product(s). It was for gain of the OP. By employing unfair trade practice, the OP is minting lot of money from the gullible customers from all their stores situated across the country.

8. The Opposite Party Co. appealed under Section 15 of the Act 1986 before the State Commission.

The State Commission (also) made its appraisal of the evidence, and, vide its impugned Order of 18.05.2020, dismissed the appeal.

The State Commission's findings are succinctly articulated in paras 14 and 15 of its Order, which are reproduced below for ready appreciation:

14. It was also vehemently contended by Counsel for the appellant that the purchase of carry bag is entirely optional and is a voluntary act by a consumer. However, in the same breath, it was also contended by her that the customers cannot bring their own carry bags containing items/goods purchased from other shops.

It may be stated here that, once we have already held that all kinds of expenses incurred in order to put goods into a deliverable state shall be suffered by the seller, as such, the contention raised does not merit acceptance. Ever otherwise, as per the contention raised by Counsel for the appellant, on the one hand, purchase of carry bags is made optional & voluntary but at the same time, the consumer / customer is not allowed to enter the shop with their own carry bags containing some goods purchased from other shop premises. We cannot expect that for every single item/article intended to be purchased by a customer, he/she needs to carry separate carry bags. For e.g. if a customer wants to purchase, say

about 15 in number, daily-use goods/articles like macroni pep, dettol, oreo; cop urad, soap, toothpaste, shaving cream, pen, pencil etc., from different shops, we cannot expect him/her to take 15 carry bags from home, for the same. Thus, by not allowing the customers to carry their own carry bags by the appellant in its premises, there was no option left with them to buy the carry bags alongwith the goods purchased, to carry the same from the shop-premises. We are shocked to note the kind of services provided by these big Malls/Showrooms. One cannot be expected to take the goods like macroni pep, dettol, oreo; cop urad etc., purchased, in hands. By not allowing the customers to bring in the shop premises, their own carry bags, and thrusting its own carry bags against consideration, the appellant is deficient in providing service and also indulged into unfair trade practice. No case is made out to reverse the findings of the respective District Forum in each appeal.

15. For the reasons recorded above, we are of the considered opinion that all these appeals are devoid of merit and the same deserve dismissal. Consequently all the above captioned appeals are hereby dismissed with no order as to costs. The orders of the District Forum in each appeal are upheld.

9. The Opposite Party Co. has filed the instant Revision Petition under Section 58(1)(b) of The Consumer Protection Act, 2019 (the 'Act 2019') [corresponding Section 21(b) of the Act 1986] before this Commission. [The jurisdiction of this Commission under both sections i.e. Section 21(b) of the Act 1986 and Section 58(1)(b) of the Act 2019 is the same (the articulation in both is identical).]

10. It is well evident from the examination made by the two Fora below that earlier the Opposite Party Co. was providing carry bags made of polythene to its consumers without charging additional cost. Later it dispensed with polythene and substituted cloth in its stead and started charging additional cost for the cloth carry bags. Prominent prior notice / signs / announcement / advertisement / warning to the consumers, before the consumers exercised their choice to make their purchases from the outlets of the Opposite Party Co., that additional cost will be charged for carry bags, was not there. Consumers were under the impression that as per the earlier practice of the Opposite Party Co., and as per the normal practice in retail outlets in general, no additional cost would be charged for the carry bags. Consumers were not allowed / were not in a position to / did not have prior notice or information to take their own carry bags. After making their purchases, at the time of making the payment, additional cost for carry bags was imposed on the consumers.

Both the Fora below, having respectively appraised the case, weighed the evidence, have returned concurrent findings of deficiency and unfair trade practice on the part of the Opposite Party Co.

No palpable crucial error in appreciating the evidence is visible. No jurisdictional error, or miscarriage of justice, is visible.

The Award made by the District Forum, as upheld by the State Commission, appears just and equitable in the facts of the case.

On the face of it, nothing warrants interference with the Award in exercise of the revisional jurisdiction of this Commission.

11. The argument made by learned senior Counsel, in the hearing on admission on 01.12.2020, that in “similar” cases of other traders notice has been issued by co-ordinate benches of this Commission, is not tenable.

A revision petition merits issuance of notice if a *prima facie* case is made out on merit. If a revision petition is totally bereft of merit, no notice is required, it can (and albeit should) be dismissed on admission, with reasons recorded.

Mere issuance of notice by a co-ordinate bench in “similar” cases of other traders is not a binding precedent.

For a precedent to be binding, *one*, the issue in question has to be duly examined, and, *two*, the reasons for arriving at the conclusion arrived at have to be duly recorded. Without examination or reasons recorded on the issue in question, an order does not become a binding precedent; only if an issue is examined and decided with a reasoned order, it becomes a binding precedent. (And then, too, for further reasons recorded subsequently, the precedent could be reviewed or referred to a larger bench etc. as per the new facts and wiser counsel and as per the law.)

In the context of the doctrine of binding precedent, there is a material difference between interim / interlocutory Orders and final Orders / Judgments. The daily orders referred to by the learned senior Counsel are not final Orders / Judgments.

Another argument made that in a “similar” case of a trader relating to charging of additional cost for carry bags, the Competition Appellate Tribunal, vide its Order dated 07.07.2005, in Appeal No. 64 of 2015, Kamble Sayabanna Kallappa vs. Lifestyle International Private Limited, dismissed the Appeal preferred against the refusal of the Competition Commission of India to order an investigation into the alleged anti-competitive conduct of the concerned trader, is also not tenable.

The Competition Commission of India / the Competition Appellate Tribunal and the Consumer Protection Fora function in different domains, with different aims and objects, the one independent of the other, the one under its own statute, The Competition Act, 2002, the other under its own, The Consumer Protection Act, 2019.

A further argument made that the goods sold are properly packed, in conformity with the applicable Rules, is also not tenable.

The traders (the definition of ‘trader’ includes ‘packer’) have necessarily to comply with the Rules re Packaging. The question here is not of ‘Packaging’, which has necessarily to conform to the applicable Rules, but of whether or not additional cost can be imposed to provide carry bags at the time of making payment for the goods selected for purchase, without prior notice or information being given, before the consumer patronizes the retail outlet of the Opposite Party Co., and before the consumer made his selection for purchase.

A still further argument made that the Opposite Party Co. has since dispensed with polythene and is using eco-friendly cloth in its stead and that it provides the cloth bags on a no-profit basis, is also not tenable.

The question here is not of cloth bags being eco-friendly or not, or of the cloth bags being sold on no-profit basis or not, but, as already said, of whether or not additional cost can be imposed to provide carry bags at the time of making payment for the goods selected for purchase, without prior notice or information being given, before the consumer patronizes the retail outlets of the Opposite Party Co., and before the consumer made his selection for purchase.

The arguments made do not merit issuance of notice. If a *prima facie* case on merit is not made out, if the revision petition is totally devoid of merit, it requires to be dismissed, with reasons recorded.

12. The Complainant has already proved his case in two Consumer Protection Fora. Here, a company, with wherewithal, is on the one side, and an ordinary common consumer, without wherewithal, is on the other side. Putting him to trouble in a third Forum (this Commission), when no case is made out on merit in the revision preferred before this Commission, would be inappropriate and albeit compromise the aims and objects of the statute.

As such, the request of learned senior Counsel to at the very least issue notice to the Complainant is politely declined.

13. It is well evinced that earlier the Opposite Party Co. was providing carry bags made of polythene to its consumers without charging additional cost.

Later it dispensed with polythene and substituted cloth in its stead, and concomitantly started charging additional cost for the cloth carry bags.

Prominent (repeat prominent) prior (repeat prior) notice / signs / announcement / advertisement / warning to the consumers, before (repeat before) the consumers exercised their choice to make their purchases from the outlets of the Opposite Party Co., that additional cost will be charged, was not there.

Consumers were under the impression that as per the earlier practice of the Opposite Party Co., and as per the normal practice in retail outlets in general, no additional cost would be charged for the carry bags.

Consumers were not allowed / were not in a position to / did not have prior notice or information to take their own carry bags.

After making their purchases, at the time of making the payment, additional cost for carry bags was imposed on the consumers.

Carry bags of undisclosed specifications were forced on the consumers at price as fixed by the Opposite Party Co., the consumers were forced to accept the carry bags, of undisclosed specifications, at the price fixed.

The normal practice in retail outlets is to provide carry bags without additional cost, to enable convenience in carrying the purchased goods (this is different from 'Packaging' which in any case has necessarily to be compliant to the applicable Rules). In the case of the instant Opposite Party Co., the same normal was earlier in place i.e. carry bags (made of polythene) were provided

without additional cost. On switching to carry bags made of cloth, the normal was changed, an additional cost was imposed.

The consumer has the right to know, before he exercises his choice to patronize a particular retail outlet, and before he makes his selection of goods for purchase, that additional cost will be charged for carry bags, and also the right to know the salient specifications and price of the carry bags. Prominent prior notice and information has necessarily to be there (*inter alia* at the entrance to the retail outlet also), to enable the consumer to make his choice of whether or not to patronize the concerned outlet, and the consumer has necessarily to be informed of the additional cost for carry bags and of their salient specifications and price before he makes his selection of the goods for purchase.

It cannot be that a notice is displayed at the payment counter or that the consumer is informed at the time of making payment that additional cost will be charged for carry bags, after the consumer has already made his selection for purchase and has already made payment or is in the process of making payment for the selected goods. It also cannot be that carry bags of (undisclosed) specifications and of price as fixed by the Opposite Party Co. are so forced on the consumer. Such notice or information at the time of making payment not only causes embarrassment and harassment to the consumer and burdens him with additional cost but also affects his unfettered right to make an informed choice of patronizing or not patronizing a particular outlet at the initial stage itself and before making his selection of goods for purchase.

It may be noted that carry bags, sold at a particular price to the consumer, are in themselves 'goods', and, as such, are themselves, too, within the ambit of the statute for "better protection of the interests of consumers". It cannot be that the said goods (i.e. the carry bags) are imposed on the consumer, without disclosing their salient specifications, at the price fixed by the Opposite Party Co., without prior notice or information that (additional) cost will be charged for them.

The aberrations, in such facts and manner, arbitrarily and highhandedly, are unquestionably 'unfair trade practice' under Section 2(1)(r) of the Act 1986 [corresponding Section 2(47) of the Act 2019].

Section 2(1)(r) of the Act says of "a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-".

The list provided in Section 2(1)(r) is illustrative and not comprehensive.

That is to say, an unfair method or unfair or deceptive practice, as is judiciously determined, on facts and reasons, on fair and objective appraisal of the evidence and material on record, would qualify as 'unfair trade practice' within the meaning of Section 2(1)(r).

In the instant case, arbitrarily and highhandedly deviating from its past practice, deviating from the normal, not giving adequate prominent prior notice or information to the consumer before he makes his choice of patronizing the retail outlet, and before he makes his selection for purchase, imposing additional cost of carry bags at the time of making payment, after the selection has been made, forcing carry bags without disclosing their salient specifications at price as fixed by the Opposite Party Co., putting the consumer to embarrassment and harassment, burdening the consumer with additional cost, in such way and manner, is decidedly unfair and deceptive.

14. As a matter of Consumer Rights, the consumer has the right to know that there will be an additional cost for carry bags (the same being a deviation from the normal wont in retail outlets in general), and also to know the salient specifications and price of the carry bags, before he exercises his choice of patronizing a particular retail outlet and before he makes his selection of goods for purchase from the said retail outlet.

15. The Opposite Party Co. through its Chief Executive is ordered under Section 39(1)(g) of the Act 2019 [corresponding Section 14(1)(f) of the Act 1986] to forthwith discontinue its unfair trade practice of arbitrarily and highhandedly imposing additional cost of carry bags on the consumer at the time of making payment, without prominent prior notice and information before the consumer makes his choice of patronizing its retail outlets and before the consumer makes his selection of goods for purchase, as also without disclosing the salient specifications and price of the carry bags. The necessary notice / signs / announcement / advertisement / warning should be in the place and manner as may enable the consumer to make his informed choice of whether or not to patronize its retail outlets, and whether or not to make his selection of goods for purchase from its retail outlets. The notice or information cannot be at the occasion of making payment, after the consumer has exercised his choice to patronize its retail outlet, and after he has made his selection of goods for purchase.

The Opposite Party Co. through its Chief Executive shall most immediately issue appropriate instructions to all its retail outlets accordingly.

A report-in-compliance shall be filed by the Opposite Party Co. through its Chief Executive with the District Forum within eight weeks of the pronouncement of this Order.

16. There is no hesitation in dismissing the Opposite Party Co.'s case.

17. The Opposite Party Co. through its Chief Executive shall ensure compliance of the Award made by the District Forum, as upheld and sustained by the State Commission, within four weeks of the pronouncement of this Order.

18. The District Forum shall undertake execution as per the law for failure or omission in compliance within the stipulated period (paras **15** and **17**).

19. Towards this end, the Registry is directed to send a copy each of this Order to the Chief Executive of the Opposite Party Co. and to the District Forum, as also to the Complainant, within three days of its pronouncement.

20. It may be added that the liability qua the Complainant continues, as a continuing wrong.

This observation is being made in reference to ' *Enforcement* ' and ' *Penalty* ' in execution proceedings.

21. It is made explicit that the critique apropos the Opposite Party Co. and the order under Section 39(1)(g) of the Act 2019 to the Opposite Party Co. have been made *inter alia* considering that it is a company with the wherewithal and *inter alia* considering the way and manner in which it conducts its business of retail.

As such, nothing in the critique and in the order made under Section 39(1)(g) of the Act 2019 can be (mis) construed to be made applicable to differently / lesser placed traders, the applicability can only be made on similarly / better placed traders, similarly / better situate, having similar way and manner of conducting their business.

22. R.P. No. 975 of 2020, the lead-case, is so disposed.

R.P.s No. 976 of 2020 to No. 988 of 2020

23. The R.P.s No. 976 of 2020 to No. 988 of 2020 are disposed of, *mutatis mutandis*, with similar directions, in terms of the examination and reasons contained hereinabove apropos R.P. No. 975 of 2020, the lead-case.

.....
DINESH SINGH
PRESIDING MEMBER