

Date of filing : 15.09.2023

Date of Order : 09.05.2024

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**VILLUPURAM.**

Present: Thiru.**D.SATHISH KUMAR**, M.A., B.L., : **PRESIDENT.**  
Thiru.**S.M.MEERA MOHIDEEN**, B.Sc., B.L. : **MEMBER.I**  
Tmt. **K.AMALA**, M.A., LL.B., PGDCLP., : **MEMBER.II**

**CONSUMER COMPLAINT NO: 52 / 2023**

THURSDAY, THE 9<sup>TH</sup> DAY OF MAY 2024

C.Arokiasamy,  
S/o. Chinnaiyan,  
Murugan Kovil Street,  
Vazhudhureddi,  
Villupuram.

.. Complainant.

- Vs -

The Proprietor,  
Hotel Balamurugan,  
Opposite to New Bus Stand,  
Villupuram.

.. Opposite party.

Counsel for Complainants : **Party in Person.**  
Counsel for Opposite Party : **Mr.B.Karthick.**

On perusal of records and having heard oral argument of complainant and opposite party side we delivered the following.

**ORDER**

**Pronounced by Tmt. K.AMALA, M.A., LL.B., PGDCLP., MEMBER.II**

i. The complainant has filed this complaint under section 35 of the Consumer Protection Act 2019. The complainant had prayed to direct the opposite party (1) to refund a sum of Rs.25/- towards the cost of the pickle (2) to issue sales receipt. (3) to pay a sum of Rs.50,000/- as compensation for deficiency in service, mental agony,

pain and sufferings (3) to pay a sum of Rs.10,000/- towards the cost of this complaint (4) to pass such other relief which this Hon'ble court may deem fit and proper in the interests of justice.

ii. The complainant submitted his Proof Affidavit, Addl., proof affidavit, Written Argument and Ex.A1 to A9 documents were marked. The opposite party submitted his Proof Affidavit, Written Argument and Ex.B1 document was marked.

### **COMPLAINT IN BRIEF:-**

1. The complainant states that his relative died on 28.11.2021 at Vazhudureddi. Therefore the complainant decided to conduct Annathanam by offering meals for 25 persons on his 1<sup>st</sup> death anniversary day for which he approached the opposite party on 27.11.2022 and enquired about the details of the meals. The opposite party also informed that the cost is Rs.70/- for one meal and Rs.80/- for parcel.

2. When the complainant asked the menu of the meals the opposite party given the following menu namely 1. White rice 2. Sambar 3. Kara Kuzhambu 4. Rasam 5. Butter milk 6. Koottu 7. Poriyal 8. Appalam 9. Pickle 10. Large size Banana Leaves 11. cover which was accepted by the complainant and ordered for 25 meals.

3. The complainant also paid Rs.2000/- for 25 meals at Rs. 80/- per parcel meal. The opposite party also made entry in the quotation. When the complainant requested for purchase bill, the opposite party informed that it will be given while delivering the parcel meals. On 28.11.2022 at about 2.00 p.m. they handed over the parcel meals in two rice Gunny bags and also given a slip printed as Balamurugan Tiffin Centre with Rs.2000/- entered on it and signed by him. The complainant asked for original bill containing the serial number and address of the complainant. But the opposite party replied that he would hand over the bill after his father's arrival. When the complainant opened the parcel he came to know that the parcel was given in plastic bags which is banned by the Government. As per the Agreement the parcel should have been given in paper covers. After receiving the consideration, the act of the opposite party given the meals in plastic bag amounts to unfair trade practice amounts to offence.

4. When the meals were served to the guests who attended the function he came to know that pickle was not delivered along with meals and he was shocked which caused mental agony to the complainant. During oral communication while ordering the meals, the opposite party informed that they will deliver 25 packets of pickle with cost of Rs.1/- per packet. Immediately when the complainant approached the opposite party about the non delivery of the pickle, they accepted their mistake and assured to deliver the pickle, so that he could serve the guests. But meanwhile all the guests finished their lunch. Therefore the complainant refused to take delivery of the pickle since it is not needed and requested the opposite party to repay Rs.25/- paid by the complainant towards pickle. But he refused to repay the said amount. The act of the opposite party of not delivering pickle along with meals amounts to deficiency in service. The relatives and friends who came to the function spoken humiliating words against him for the absence of the pickle which caused unease to the complainant.

5. The opposite party failed to repay Rs..25/- and also failed to issue the original receipt for purchase of meals till date. The opposite party is running lodge and hotel in the ground floor to a large extent but his act of not issuing the bill and not paying tax to the government amounts to cheating. Therefore he raised complaint to the Assistant Commissioner, Commercial Tax Department on 26.12.2022 to take action against the opposite party. He also sent a letter to the opposite party on 5.12.2022 to issue purchase bill and Rs.25/- towards the cost of pickle. But they failed to respond and again on 14.2.2023 he sent a letter to the opposite party, but till date there is no reply from them. Hence the complainant had filed this complaint.

## **II. Written version of the opposite party in brief:**

1. The Complaint is vexatious, unsustainable in law and on facts and is liable to be dismissed with costs.
2. The opposite party humbly submits that the complaint lacks merit and substance, most frivolous, most vexatious abuse of process of law and therefore not maintainable in law or on facts consequently liable to be dismissed with exemplary costs without any consideration whatsoever.

3. The opposite party specifically denies the allegations set out in the para (1), (2) of the complaint and the complainant is put to strict proof of those allegations. The allegations that the complainant's relative died on 28.11.2021 and that for his 1<sup>st</sup> ceremony they had decided to give Annadhanam and that he had approached the opposite party on 27.11.2022 enquired about the meals price and that the opposite party said that Parcel meals is Rs.80/- and the particulars are 1.White Rice, 2.Sambar, 3.Karai Kulambu, 4.Rasam, 5.Curd, 6. Kuttu, 7. Poriyal, 8. Pappat, 9. Pickle, 10. Banana leaf, 11.Carry Bag totally 11 items are all false and baseless. This opposite party never take any order from the complainant at any point time.

4. The opposite party specifically denies the allegations set out in the para 3,4 of the complaint and the complainant is put to strict proof of those allegations. The allegations that the complainant agreed with condition and he paid the advance Rs.2000/- for 25 meals and the opposite party was endorsed in the estimation Bill (complainant's Doc.No.1 ) and that on 28.11.2022 by 2.00 P.M the complainant had received the meals in two sack bags and he asked Bill to the opposite party and the opposite party given one small Bill in the name and style as "Balamurugan Tiffin Centre" (complainant's Doc.No.2)and that the complainant asked original bill with serial number address and signature the opposite party reply that they will give the bill later and that the complainant went to the house and he was shocked, that the parcel meal was given in the Banned polythene bag are all false and unbelievable. This opposite party specifically denies that the estimation bill and Balamurugan Tiffin Centre bill are not their bills. In fact, this opposite party will only issue the computerized bill to their customers and also the opposite party is/was paying the GST Tax regularly.

5. The opposite party specifically denies the allegations set out in para 5 of the complaint and the complainant is put to strict proof of those allegations. The allegations that when the complainant had been distributing the food to the senior citizen, during that time, the complainant got ashamed in front of the senior citizen, since when the senior citizen asked the pickle, he was not able serve the pickle, because the opposite

party was not given and that complainant was put to mental agony and that there is a deficiency of service on the part of this opposite party are false and baseless.

6. The opposite party specifically denies the allegations set out in the para 6,7 of the complaint and the complainant is put to strict proof of those allegations. The allegations that when the complainant questioned that in the parcel meal no pickle was served and immediately, the opposite party realized his mistake and ready to give the pickle, but the complainant refused that already he served hence the complainant had demanded Rs.25/- for the value of pickle and the same was denied by the opposite party are all false, baseless and it was invented for the purpose of this complaint.

7. The opposite party specifically denies the allegations set out in the para 8 of the complaint and the complainant is put to strict proof of those allegations. The allegation that the opposite is not paying tax to the Government is another piece of falsehood without any basis. In fact, this opposite party is/was paying the GST Tax regularly.

8. The Complainant had Suppressed the truth and had come forward with a false case. The truth is as follows:

a) The document No. 1 of the complaint does not contain the name of the Hotel or seal of the opposite party.

b) The document No.2 of the complaint bill refers "Balamurugan Tiffen Centre", but that was not receipt of this opposite party. Further the opposite party is only referred as "Balamurugan Veg Restaurant" situated at No.105, Trichy Main Road, Villupuram and the certificate is filed herein and it may be read as part and parcel of the written statement.

c) The document No.3 of the complaint refers "plastic polythene bag" according to the complainant, the opposite party had given the rice in the polythene bag is unbelievable, since because, when the hot rice is put in the polythene bag, immediately it will be melt, hence the allegation is false and incorrect.

d) The opposite party submits that the procedure adopted by the opposite party while taking parcel order for more than 10 person, they will request the party to bring the vessels to carry the foods or they will provide the carrier. The photographs of the carrier is filed herein and it may be read as part and parcel of this written statement.

e) The document No.5 & 6 of the complaint are contradiction with one another, hence it cannot be believable.

f) The opposite party submits that the complainant had never placed any order as referred in the complaint to this opposite party at any point of time.

g) The opposite party submits that the opposite party never issued any estimate bill, receipt to the complainant nor delivered any parcel items as referred in the complaint.

h) The opposite party submits that the complainant is a politician and also a chronic litigant.

i) The opposite party submits that the complaint is only to harass and to drain money from the poor businessman in our town without any substance.

9. There is no cause of action and the alleged cause of action is illusory and imaginary.

10. The Complaint is without any merit and is only a luxury and there is no deficiency of service.

11. The opposite party reserves his right to file a malice prosecution as against the complainant in the near future.

12. The opposite party denies all the claims, contentions and allegations in the complaint as false, frivolous, and vexatious except those that are specifically admitted herein above.

13. Therefore the opposite party humbly prays that this Hon'ble Court may be pleased to dismiss the suit with exemplary costs and render justice.

### **III. THE POINTS FOR CONSIDERATION ARE :**

- 1) Whether the complainant purchased 25 meals from the opposite party and paid Rs.2000/- on 28.11.2022?
- 2) Whether the complainant is entitled for refund of Rs.25/- towards the actual price of the pickle for 25 meals ordered by the complainant?
- 3) Whether the opposite party committed deficiency in service?
- 4) If so, to what reliefs the complainant is entitled to?

#### **POINT NO.1**

1. As per the contention of the complainant, his relative died on 28.11.2021 at Vazhureddi. Therefore the complainant decided to conduct Annathanam by offering meals for 25 persons on his 1<sup>st</sup> death anniversary day for which he approached the opposite party on 27.11.2022 and enquired about the details of the meals. The opposite party also informed that the cost is Rs.70/- for one meal in dining and Rs.80/- for parcel.

2. When the complainant asked the menu of the meals the opposite party given the following menu namely 1. White rice 2. Sambar 3. Kara Kuzhambu 4. Rasam 5. Butter milk 6. Koottu 7. Poriyal 8. Appalam 9. Pickle 10. Large size Banana Leaves 11. cover which was accepted by the complainant and ordered for 25 meals.

3. The complainant also contended that he paid Rs.2000/- for 25 meals at Rs. 80/- per meal. The main grievance of the complainant is that when the meals was served to the persons who attended the function he came to know that pickle was not delivered along with the meals. Due to which he was humiliated and embarrassed by the degrading words of the guest which caused mental agony to the complainant.

Therefore he approached the opposite party, but they assured to deliver the pickle comprised in one pack for 25 persons. Meanwhile, since all the guest finished their lunch it was not necessary to take the pickles and complainant requested for refund of Rs.25/- towards the cost of the pickle. But the opposite party refused to repay Rs.25/- to the complainant.

4. Further he also raised allegation that on 28.11.2022 when the complainant made payment of Rs.2000/- and requested for purchase bill, the opposite party informed that it will be given while delivering the parcel meals. but issued a small slip in the name of Balamurugan Tiffin centre with signature of the opposite party and also delivered the parcel in plastic bags banned by the Government of India which all amounts to deficiency in service. Hence the complainant is claiming refund of the cost of the pickle along with compensation.

5. Whereas the opposite party objected the entire averments and allegations raised in the complaint stating that the complainant never approached the opposite party on 27.11.2022 and never made any order for 25 meals nor paid Rs.2000/- to the opposite party. On the other hand the opposite party admitted that they are paying the GST regularly and they had also filed the tax receipt along with the written version as such they are not evading to pay tax to the Government as alleged by the complainant. Therefore the opposite party is raising plea to dismiss the complaint.

6. The primary issue to be decided in the complaint is whether the complainant approached the opposite party and ordered for 25 meals as parcel by paying a sum of Rs.2000/- to the opposite party on 28.11.2022.

7.The complainant has filed Ex.A1, which is the quotation for parcel meals signed by the opposite party and also mentioned the cost of the meals as Rs.2000/-. Ex.A2 is



the receipt given by the opposite party for Rs.2000/- received from the complainant for 25 meals in the name of Balamurugan Tiffin centre, Villupuram. **Though the opposite party denied that Balamurugan Tiffin centre bill did not belong to them they had nowhere denied in the written version that the hand script and the signature in the Ex.A1 & A2 is not that of the opposite party. It is also seen that the signature in Ex.A1 & A2 are one and the same.** Further Ex.A7 is the photographs of the hotel when the parcel was made by them and Ex.A8 is the photograph of the front portion of the hotel and reception of the opposite party in which a booklet of slips for taking order from customers is placed on the table is crystal clear. The opposite party not denied the two photographs namely Ex.A7& A8 that it is not their hotel.

8. But the counsel for the opposite party while submitting his arguments only taken technical ground that the photos were filed as documentary evidence without Sec. 65 B certificate filed under Indian Evidence Act. Since the opposite party not denied the document the technical ground taken by the opposite party for rejecting the documents is not acceptable. It is also pertinent to note that already the complainant filed petition in CMP. No.151/2023 to mark the photographs as additional documents, and the opposite party also filed counter in the said petition and the CMP petition was allowed on merits on 3.1.2024. But the opposite party filed a memo stating that he preferred RP before the Hon'ble State Commission, vide R.P.SR.No.A24010018712 on 5.2.2024. Considering the efforts taken by them, this Commission also given sufficient opportunities to the opposite party to get order in favour of them or any stay order from the Hon'ble State Commission. But the opposite party failed to produce any stay order from Hon'ble State Commission. Hence this Commission is constrained to conclude the case.

9. Moreover, since this is a summary trial in Quasi Judicial proceedings strict adherence of Civil Procedure code not mandatory. This Commission is also of the view that exhibits cannot be denied on technical ground .Hence in the interest of consumer dispute and upon the object of the Consumer Protection Act 2019. this Commission permitted the photographs. The above exhibits proves i.e Exhibit A.7 & Exhibit A.8 that the complainant had approached the opposite party and ordered for parcel meals by paying Rs.2000/- on 28.11.2022.

10. This Commission also perused the Ex.A9, which proves that in pursuance of the complaint given by the complainant to the Assistant Commissioner, Commercial Tax Department, Villupuram that the opposite party had not issued receipt for the payment of Rs.2000/- made to the opposite party on 28.11.2022 towards parcel meals, the Assistant Commissioner also conducted enquiry in which the opposite party admitted they had issued computerized bill for Rs.2000/- vide bill No.364/28.11.2022 and deducted service tax and GST Tax amount of 5% and submitted the GST bill to the Enquiry Officer. The GST bill submitted before the Commercial Tax Officer is also enclosed along with the Ex.A9. On perusing the GST bill it is found that the opposite party had done sale for a sum of Rs.2000/- on 28.11.2022 is established. The GST paid by the opposite party for Rs.2000/- is admitted by the opposite party. But simply denial of the opposite party that the complainant not approached them is not acceptable nor justifiable.

11. The opposite party also raised objection that the date of payment is contradictory in the documents filed by the complainant. But this Commission found from documentary evidence that only on 28.11.2022 complainant paid Rs.2000/-. This Commission is not inclined to accept the technical ground raised by the opposite party.

12. Further the opposite party also contended that Ex.A2 Balamurugan Tiffin Centre bill does not belong to them. In proof affidavit of opposite party Mr. Iyyappan had sworn that he is the proprietor of Hotel Balamurugan whereas in the written version he had contended that opposite party is only referred as Balamurugan Veg Restaurant is contradictory. It is also to be seen that the complaint mentioned hotel and the Balamurugan Tiffin centre and Balamurugan Vegetarian Restaurant are all situated at No.105, Trichy Main Road, Villupuram. The notice sent from this Commission to the opposite party which is situated in the above address is also served to the opposite party. Ex.B1, certificate of registration filed by the opposite party pertain to Balamurugan Vegetarian Restaurant. It is only the opposite party is giving contradictory statement by admitting that they had paid GST for Rs.2000/- on 28.11.2022, but denying the order and payment received from the complainant.

13. Hence from the documentary evidence it is crystal clear that complainant approached the opposite party on 28.11.2022 and paid a sum of Rs.2000/- towards parcel meals. Point No.1 is answered accordingly.

### **POINT NO.2**

14. As discussed in Point No.1, the complainant approached the opposite party on 28.11.2022 and paid a sum of Rs.2000/- towards 25 parcel meals is established.

15. The 2<sup>nd</sup> issue raised by the complainant is that when the meals was served to the guest on 28.11.2022 he found that pickle was not delivered along with meals, due to which he was humiliated and embarrassed by the degrading words of the guest which caused mental agony to the complainant.

16.The complainant had also adduced evidence in his proof affidavit that when he ordered for meals the Opposite party promised to deliver one pickle packet Value of Rs.1/- with each meal. Since pickle was not delivered he approached the opposite party. When the opposite party replied that they were ready to deliver whole pickle in one packet the complaint refused and sought for refund of the price of the pickle since by the time the guest had finished their lunch. The complainant had also sent letters to the opposite party on 5.12.2022 and 14.2.2023 which is marked as Ex.A5 & A6, in which he had clearly mentioned about the non delivery of pickle which was not responded by the opposite party. The complainant had paid the cost of pickle is also evidenced from Ex.A1 which is the quotation hand written and signed by the opposite party proves that the cost of the pickle is also included in the amount paid by the complainant. Since from the documents on record it is proved that pickle was not delivered, the complainant is entitled for refund of the cost of the pickle of Rs.25/-. Point No.2 is answered accordingly.

### **POINT NO.3**

17. As discussed in Point No.1 & 2 it is crystal clear that after receiving payment of Rs.2000/- towards parcel meals which includes the price of pickle as per Ex.A1, the act of the opposite party of not delivering pickles for 25 meals amounts to deficiency in service. It is also seen that the complainant had approached the opposite party and also sent letters to them for refund of the price of the pickle. Even then the opposite

party failed to redress the grievance of the complainant amounts to deficiency in service.

18. Further it is also seen that opposite party had not issued bill for purchase of 25 meals for a sum of Rs.2000/- on 28.11.2022. The same is also evidenced from the complaint given to the Assistant Commissioner, Commercial Tax Department, Villupuram and information and also from the letter seeking information under RTI as per Ex.A9 which all amounts to deficiency in service.

19. On the other hand with regard to the plea of the complainant that the opposite party delivered the meals in plastic cover which is banned by the Government, this Commission found that the opposite party never received any charges for the plastic cover. Point No.3 is answered accordingly.

#### **POINT NO.4**

20. As discussed in Point Nos.1 to 3, it is crystal clear that after receiving payment of Rs.2000/- towards parcel meals which includes the price of pickle as per Ex.A1, the act of the opposite party of not delivering pickles for 25 meals, and also not issued receipt for purchase of meals for Rs.2000/- amounts to deficiency in service. Due to the act of the opposite party the complainant suffered mental agony is also acceptable.

21. Hence we are inclined to allow the complaint in part and the opposite party is directed to repay to the complainant a sum of Rs.25/- towards the actual price of the pickle which was not delivered along with 25 meals ordered by the complainant, to issue computerized bill for purchase of 25 meals on 28.11.2022 and to pay a sum of Rs.30,000/- towards compensation for the deficiency in service committed by the opposite party and for the physical hardship and mental agony suffered by the complainant along with a sum of Rs.5,000/- towards litigation cost. Point No.4 is answered accordingly.

**In the result, the complaint is partly allowed.**

**The opposite party is directed**

**(1) To repay to the complainant a sum of Rs.25/- towards the actual price of the pickle which was not delivered along with 25 meals ordered by the complainant**

**(2) To issue computerized bill for purchase of 25 meals on 28.11.2022**

**(3) To pay a sum of Rs.30,000/- towards compensation for the deficiency in service committed by the opposite party and for the physical hardship and mental agony suffered by the complainant**

**(4) To pay a sum of Rs.5,000/- towards litigation cost.**

**All the above orders has to be complied by the opposite party as directed within a time frame of 45 days from the date of receipt of the order, failing which the complainant is entitled to claim the same with interest @ 9% per annum from the date of this order to till the date of realization.**

Dictated to Steno Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on this the 9<sup>th</sup> May 2024.

Sd/-  
**MEMBER.II**

Sd/-  
**MEMBER.I**

Sd/-  
**PRESIDENT**

**Complainant side witness:**

P.W.1 C.Arokiyasamy .. (Complainant)

**Complainant side documents:**

Ex.A1	:	28.11.2022	Xerox copy of the quotation for Rs.2000/- issued by the opposite party to the complainant for 25 meals.
Ex.A2	:	28.11.2022	Xerox copy of the normal receipt for Rs.2000/- issued by the opposite party to the complainant for 25 meals.
Ex.A3	:	28.11.2023	Plastic bag for packing of meals by the opposite party to the complainant which is banned by the Government.
Ex.A4		26.12.2022	Xerox copy of the complaint sent by the complainant to the Commercial Tax Department.
Ex.A5		05.12.2022	Xerox copy of the complaint sent by the complainant to the opposite party.
Ex.A6		14.02.2023	Copy of the notice sent by the complainant to the opposite party.

- Ex.A7            --            Photographs (4 Nos) showing packing of food items in plastic covers by the opposite party's hotel.
- Ex.A8            --            Photographs (2 Nos) showing duplicate receipts placed on the table of proprietor (similar to bit notices)
- Ex.A9            16.11.2023            Copy of the reply sent by the Assistant Commissioner, Commercial Tax Department, Villupuram under RTI Act to the complainant regarding GST bill issued by the opposite party for purchasing 25 meals by the complainant.

**Opposite party side witness:**

D.W.1    Mr.Iyappan, (**Proprietor of Hotel Balamurugan**)

**Opposite party side documents:**

Ex.B1        :    31.12.2022            Registration certificate of "Balamurugan Veg Restaurant" situated at No.105, Trichy Main Road, Villupuram.

Sd/-  
**MEMBER.II**

Sd/-  
**MEMBER.I**

Sd/-  
**PRESIDENT**