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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10683/2022, CM APPL. 31033/2022

NATIONAL RESTAURANT ASSOCIATION OF INDIA & ORS.
..... Petitioners

Through: Mr.Lalit Bhasin, Ms.Nina Gupta, Ms.Ananya Marwah, Ms.Ruchika Joshi and Mr.Ajay Pratap Singh, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr.Sandeep Mahapatra, CGSC for UOI.
Mr.Varun Kumar Garg, Adv. for R-1 & 2.

\+ W.P.(C) 10867/2022, CM APPL. 31645/2022 (Interim Relief)

FEDERATION OF HOTEL AND RESTAURANT ASSOCIATIONS OF INDIA & ORS. ..... Petitioners

Through: Mr.Sandeep Sethi, Sr. Adv. with Mr.Sameer Parekh, Mr.Sumit Goel and Ms.Swati Bhardwaj, Advs. for P-1 to 3.

versus

UNION OF INDIA & ANR. ..... Respondent

Through: Mr.Sandeep Mahapatra, CGSC for UOI.
Mr.Deepak Tanwar, GP for R-1.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

O R D E R

% 20.07.2022

1. Notice. Since the respondents are duly represented by learned

counsels, let a reply be filed within a period of eight weeks from today.

2. Prima facie, the Court finds merit in the challenge raised to the Guidelines which have been issued by the Central Consumer Protection Authority [CCPA].

3. In order to evaluate the challenge which has been addressed, the Court firstly take note of the following recitals as appearing in the impugned guidelines dated 04 July 2022:-

> "3. It has come to the notice of the CCPA through many grievances registered on the National Consumer Helpline that restaurants and hotels are levying service charge in the bill by default, without informing consumers that paying such charge is voluntary and optional. Further, service charge is being levied in addition to the total price of the food items mentioned in the menu and applicable taxes, often in the guise of some other fee or charge.
> 4. It may be mentioned that a component of service is inherent in price of food and beverages offered by the restaurant or hotel. Pricing of the product thus covers both the goods and services component. There is no restriction on hotels or restaurants to set the prices at which they want to offer food or beverages to consumers. Thus, placing an order involves consent to pay the prices of food items displayed in the menu along with applicable taxes. Charging anything other than the said amount would amount to unfair trade practice under the Act."

4. The Court notes that the principal issue which appears to have been taken note of by the CCPA is of the levy of a service charge in addition to the total price of the food items mentioned in the menu. It further proceeds to record that the placing of an order involves a consent to pay prices displayed in the menu along with applicable taxes. According to the CCPA, charging anything over and above the same, would amount to an unfair trade practice under the Consumer Protection Act, 2019. It is on the aforesaid basis and on the consideration of the complaints asserted to have been received, that it has proceeded to issue the following directives:-

> "7. Therefore, to prevent unfair trade practices and protect consumer

interest with regard to levying of service charge, the CCPA issues the following guidelines -
(i) No hotel or restaurant shall add service charge automatically or by default in the bill.

(ii) Service charge shall not be collected from consumers by any other name.

(iii) No hotel or restaurant shall force a consumer to pay service charge and shall clearly inform the consumer that service charge is voluntary, optional and at consumer's discretion.

(iv) No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.

(v) Service charge shall not be collected by adding it along with the food bill and levying GST on the total amount."

5. The Court notes that the issue of a levy of a service charge by the hotel industry was noticed way back by the Dewan Chaman Lal Committee which had submitted its report in June 1958. Deprecating the practice of permitting serving staff to take individual tips, that Committee had recommended the implementation of the continental system of service charge both with regards to its collection as well as disbursement. The Court's attention has then been drawn to the Wage Board which came to be constituted by the Chief Commissioner of Delhi in terms of a notification dated 28 October 1964. That Board in terms of the recommendations framed and stated to have been accepted, had also provided for the levy of a service charge on costumers bills varying from 5% to 10%. The collections so made were then to be distributed with 10% going to a welfare fund, 15% being retained by the management towards breakages and 45% to be distributed to the workmen and employees of the establishment and the remaining 30% to be allocated to the wage bill. The petitioners contend that various

settlements came to be entered into between the workmen and individual establishments, awards came to be rendered by industrial adjudicators and those would clearly be upset if the impugned Guidelines were to be implemented.

6. On a more fundamental plane, the Court notes that there would be a serious doubt whether the issue of pricing and the levy of a service charge would fall within the ambit of Section 2(47) of the Consumer Protection Act, 2019 itself**.**

7. The Court also bears in mind the decisions rendered by the NCDRC in **Nitin Mittal vs. Pind Balluchi Restaurant**[1] where while dealing with a challenge to the levy of service charge, the Commission had held as follows:-

> "4. The learned counsel for the petitioner instead of touching the heart of the problem, just skirted it. It is now well established that consumer courts on the issue of pricing do not interfere in such matter as it is the discretion of the concerned restaurant to charge the price of the items as they wish. In fact it is the proposal from their side to the customers to accept the same or not. It is a contractual matter between the parties—one proposes and the other accepts. Consumer courts on both the counts cannot interfere in the business terms of the parties and the complaint cannot be admitted.
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> 5. It must be borne in mind that there has to be some difference in price in respect of food served in the restaurant itself and packed food. For the food which is served in the restaurant itself, the owner of restaurant has to incur money for furniture, carpets, Air-conditioners, fans, waiters, cleaning, moping and dusting the restaurant, maintenance of reception etc.; for packed food, there is no need to give such like services. The complainant has made a vain attempt to make the bricks without straw. Foras below have nowhere missed the wood for tree. We add our voice to theirs and dismiss the revision petition."

8. An identical issue of whether the levy of a service charge would amount to a restricted or unfair trade practice came up for consideration

before the erstwhile Monopolies and Restrictive Trade Practices Commission in **S. S. Ahuja vs. Pizza Express**[2] where after noticing the issues which arose, the Commission held as follows: -

> "10. No doubt any levy of extra charges would push up the price of the product in all circumstances, the practice is to be seen in the context and pretext it has been questioned. Whether the increased cost is justified in terms of the meaning given to the restrictive trade practice under Section 2(o) of the Act needs to be examined. It has not been shown that the levy of service charges would restrict, eliminate or distort competition in general or obstruct the flow of capital or resources into the stream of competition or flow of supplies in the market relating to goods or services in particular. Rather in absence of the aforesaid practice being universally followed, the customer has ample choice to select any one of the restaurants he would like to visit. Much can be said about the contention of the complainant that the kind of facilities like maintenance of hygienic conditions, provision of toilet tissues, hand dryers and others are separately accounted for while arriving at the profit of the restaurant. It is also true that such like facilities are offered by many restaurants but one needs to remember that it is for the trader to decide how to manage its business. The facilities in the form of free telephone, offer of ice-cream to children, magic shows, etc. on the holidays, have, however, not been denied by the complainant.
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> 11. Undeniably the restaurant in question along with serving food at the table has a facility of Carry away service for which no service charges are levied. Normally understood, service charges are levied for the service of food at the table in the restaurant. The choice rests with the customer either to take food in the restaurant bearing the service charges, as-is also a practice in other restaurants, or to carry away the food avoiding the aforesaid levy, There could, however, be no tie or up between the sale of food and service of it on the table as is in the present case. This goes along with it. These two cannot be separated. Thereof, the same cannot be covered under Clause (b) of Section 33(i) of the Act. The practice followed by the respondent as well the others in trade in no way harms the competitor in general or customer in particular. It has, thus, been sufficiently demonstrated that the respondent did not indulge in unfair or restrictive trade practices as alleged."

9. The matter requires consideration. Consequently, and till the next

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[1] [2012 SCC OnLine NCDRC 444]
[2] [MANU/MR/0105/2001]

date of listing the directions as contained in paragraph 7 of the impugned Guidelines of 04 July 2022 shall remain stayed subject to the following conditions: -

(1) The members of the petitioner Association shall ensure that the proposed levy of a service charge in addition to the price and taxes payable and the obligation of customers to pay the same is duly and prominently displayed on the menu or other places where it may deemed to be expedient.

(2) The members of the petitioner Association further undertake not to levy or include service charge on any "take away" items.

10. List again on 25.11.2022.

YASHWANT VARMA, J.

JULY 20, 2022*/bh*