

**IN THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
ODISHA, CUTTACK**

**First Appeal No. A/492/2018**

**( Date of Filing : 27 Nov 2018 )**

**(Arisen out of Order Dated 05/09/2018 in Case No. CC/42/2015 of District Ganjam)**

1. Mr. Supriyo Ranjan Mohapatra

S/o- Shri Prakash Chandra Mahapatra, R/o- Sashibhusan  
Nagar, 2nd Line, Berhampur, Ganjam-760008.

.....Appellant(s)

Versus

1. M/s. Amazon Development India Pvt. Ltd.

represented through its Manager, Commercial Brigade  
Gateway, 8th, 9th and 10th floor, 26/1, Dr. Raj Kumar  
Road, Malleshwaram, Bengalure\u, Karnataka-560055.

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE Dr. D.P. Choudhury PRESIDENT**

**PRESENT: M/s. S.P. Das & Assoc., Advocate for the Appellant 1**

**M/s. D. Singh & Assoc., Advocate for the Respondent 1**

**Dated : 11 Jan 2021**

**Final Order / Judgement**

Heard the appellant in person.

2. None appears on behalf of the respondent although the respondent has represented by an advocate. No step is taken by the respondent.

3. This is an appeal filed u/s 15 of the erstwhile Consumer Protection Act, 1986 (hereinafter called the 'Act'). Parties to this appeal shall be referred to with reference to their respective status before the District Forum.

4. Appellant submitted that while he was pursuing the first year Law B.A.LL.B.(Hons) course at Tamilnadu National law School, Trichy, the OP has floated one offer for sale of a Laptop without Laptop Bag for Rs. 190/- against the price of Rs.23,499/-. It is also submitted by the appellant that the appellant was not of a Laptop to prosecute his study. He placed an order to purchase the Laptop with offer price on 12.12.2014.

5. It is further alleged by the appellant that on the same day at 10.27 hours the OP confirmed for placing of order. Two hours after receiving confirmation, the appellant received a phone call from Customer Care Service Deptt. of the OP stating that the subject order of the complainant stand cancelled due to some price recession issue. Since the complainant was in need of such Laptop to prepare the project, the complainant raised objection for such cancellation. As the OP did not reply till 17.1.2015, complainant issued legal notice.

6. The appellant further submitted that due to non-availability of the Laptop in question, he had to purchase another Laptop but suffered from mental agony for such cancellation. So the complainant filed the complaint alleging deficiency of service and unfair trade practice on the part of the OP. The complainant/appellant has claimed compensation of Rs.50,000/- and Rs.10,000/- towards cost of litigation.

7. It is submitted by the complainant that the OP appeared and filed written version challenging the maintainability of the complaint before the learned District Forum. According to the OP, the complainant has placed order from a third party seller, Rocky Marketing through the Website managed by the OP and for that the complainant is not a consumer under the OP directly. The OP submitted that since there are no privities of contract between the parties, there is no any negligence or deficiency of service on the part of the OP.

8. The appellant/complainant submitted that the learned District Forum after hearing both parties allowed the complaint partly by directing the OP to pay compensation of Rs.10,000/- for mental agony and to pay Rs.2,000/- towards cost of litigation.

9. Complainant/appellant challenging the aforesaid impugned order stating that the learned District Forum has committed error in law by not deciding to direct Rs.50,000/- as compensation and good amount of cost. Practically he challenged the impugned order for enhancement of the amount of compensation and litigation cost.

10. Complainant/appellant further submitted that due to cancellation of the order, he has to purchase another Laptop for Rs.22,899/- and also he has suffered mental agony for not completing the project in time. Therefore, he submitted to award adequate compensation with pendent lite and future interest. He also submitted to award adequate cost and the punitive damages, so that the OP will not venture to lay unfair trade practice with any other person including the complainant. The appellant submitted to set aside the impugned order by allowing the appeal.

11. Considered the submission of the appellant and perused the DFR including the impugned order.

12. Learned District forum has found to have narrated the case in detail. The relevant portion of the impugned order is as follows:-

“xxx xxx xxx

*4. On the date of hearing of the consumer complaint learned counsel for both sides were present. We heard argument at length and perused the complaint petition, written version and written argument and materials placed on the case record. It reveals that the complainant placed his order through online in the Website of OP i.e. <http://amazon.co.in>. of OP or a laptop for an amount of Rs.190/- as against its reported original price of Rs.23,499/- and thereby offering a promotional discount of Rs.23,309/- on 12.12.2014 by the OP, with the option for the mode of payment as cash on delivery and the OP also sent e-mail on dated 12.12.2014 at 10.27 hours to the complainant's e-mail I.D. confirming the acceptance of the order vide No.#404-7619826-8681114. It implies that the complainant has accepted the offer of the OP but on the same day the Customer Service Department of the OP through telephone informed the complainant that the subject order stands*

*cancelled. It also reveals that the complainant after query regarding the cancellation of the order got to know through E-mail that due to “pricing issue” the said order is cancelled.*

Section 2(d)(1) “Consumer “ means any person who:-

- i. *Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose.”*

5. *In the instant case it is clear evident that the complainant has accepted the online offer of the OP and the complainant has proposed to pay the cash on delivery of the product as he had opted with the option for the mode of payment as cash on delivery. Hence, in our considered view the OP is not only negligent in rendering proper service to the complainant but also involved in unfair trade practice, as such we hold there is deficiency in service on the part of the OP.*

6. *In the result the complainant’s case is partly allowed against the opposite party on contest and the OP is directed to pay Rs.10,000/- (Rupees Ten Thousand) only towards compensation for mental agony to the complainant along with Rs.2,000/- (Rupees Two Thousand) only towards the cost of litigation within one month from the receipt of this order, failing which all the dues shall carry 14% interest per annum.”*

13. When there is advertisement made for offer placed by the OP who is a reputed Online Shopping Centre and made offer as per the materials available on record and the complainant placed the order and same has been confirmed, the contract is subsisted between the parties. Had there been cancellation before receipt of confirmation, the matter would have been considered otherwise when the OP is from a third party seller Rockery Marketing at his platform so responsibility of the OP cannot be lost sight of. The impugned order is adequately narrated. Before floating offer the OP should have considered whether he was able to decide to issue the advertisement and after the contract is completed, it has no business to go away from the promise. On the other hand, there is breach of contract made by the OP and for that the OP is liable to pay the damages.

14. The learned District Forum has already observed that the OP not only negligent in service but involved unfair trade practice for which this Commission fully agrees.

15. The complainant being a law student when interested for a Laptop with offer price and failed to get the same, obviously he suffered mental agony. Law is a subject where one has to deal with different issues. Purchase of Laptop has got more emphasis because the legal education gone ahead. Therefore, definitely there is mental agony suffered by the complainant, who has not completed the project in time. Apart from that he purchased a new Laptop at a price of Rs. 22,899/- that should be also compensated by the OP.

16. Be that as it may, the award of compensation of Rs.10,000/- and cost of Rs.2,000/- is found to be less and thereby this Commission is of the view that taking all factors as discussed above

for consideration, compensation should be Rs.30,000/- for unfair trade practice entered into by the OP, punitive damage of Rs.10,000/- so awarded to the complainant. So far cost of Rs.2,000/-, it should be Rs.5,000/- awarded to the concerned complainant.

17. In view of above discussion, this Commission while agreeing to the finding of the learned District Forum modify the impugned order by directing the OP to pay Rs.30,000/- towards compensation for mental agony and harassment, Rs.10,000/- towards punitive damages and Rs.5,000/- towards cost of litigation to the complainant. These payment should be made within 30 days to the complainant failing which all the payment will carry interest at the rate of 12% per annum from the date of this order payable by the OP to the complainant.

18. The appeal is disposed of accordingly.

DFR be sent back forthwith.

Supply free copy of this order to the respective parties.

**[HON'BLE MR. JUSTICE Dr. D.P. Choudhury]**  
**PRESIDENT**