

## Delhi High Court validates CCPA's Guidelines which prohibit mandatory levy of a Service Charge by a Restaurant or Hotel

11 April 2025

### Background

A Single Judge of Delhi High Court in the case of *National Restaurant Association of India v Union of India and Federation of Hotel and Restaurant Associations of India v Union of India*, 2025 SCC OnLine Del 1975 upheld the 'Guidelines to prevent unfair trade practices and protection of consumer interest with regard to levy of service charge in hotels and restaurants' dated 4 July 2022 issued by Central Consumer Protection Authority (CCPA) and took a view that the practice of restaurants of collecting a service charge on a mandatory basis is onerous and constitutes unfair contractual condition and unfair trade practice under Section 2(46) and Section 2(47) of the Consumer Protection Act, 2019 (Act) respectively.

### Guidelines

CCPA issued the following Guidelines noting that forcing a customer to pay a service charge as a condition precedent to ordering food or beverages is a restrictive trade practice as defined under Section 2(41) of the Act:

- a. No hotel or restaurant shall add a service charge automatically or by default in the bill.
- b. Service charge shall not be collected from a consumer by any other name.
- c. 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.
- d. No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.
- e. Service charge shall not be collected by adding it along with the food bill and levying on the total amount.

The guidelines were challenged by two associations of restaurants and hotels before the Delhi High Court.

### Issue before Delhi High Court

*"Whether the collection of mandatory Service Charge by restaurants and other establishments is permissible under the Consumer Protection Act, 2019"*

### Findings of Court

- (i) Once CCPA has satisfied itself that a practice is an unfair practice, CCPA is empowered to issue guidelines under Section 18 of the Act and guidelines issued by CCPA under section 18 of the Act have the force of law and are enforceable.
- (ii) An establishment is free to price its products in any manner taking into account cost of raw materials, salaries, expenditure, capital expenses on premises, however, once the product is priced, to collect charges over and above the product price is not justified.

- (iii) Restriction on a restaurant to mandatorily charge service charge is for the benefit of larger interest of the society and therefore, the restriction satisfies the test of reasonability under Article 19(1) (g) of Constitution.
- (iv) As per general practice, on most occasions, a customer does not notice the disclaimer regarding service charge on a menu as the customer's focus is on placing an order for purchase of food and beverages. A customer chooses a hotel or restaurant based on the approximate expenses that may be incurred. However, after a customer pays for the food or beverages consumed, if a customer is asked to pay 10-12% extra in the name of service charge, this amounts to an unfair trade practice.
- (v) The Court rejected the argument that there is an implied contract between an establishment and a consumer once the establishment displays the collection of service charge on menu on the ground that a consumer has little bargaining power against a restaurant.
- (vi) Service charge imposes an additional financial burden on a customer and distorts the principle of fair trade as a customer is mandatorily asked to pay service charge irrespective of the consumer's satisfaction with the food and service.
- (vii) Regarding argument that service charge is a matter of contract between management and the workmen, the Court held that there was not enough evidence produced in this regard and further any such agreement cannot override law. Further, salary of the workmen is decided on the basis of revenue generated by the establishment and not on the basis of service charge.
- (viii) The Court held that the guidelines were issued after proper stakeholder consultation and a stage wise process was undertaken with the initial guidelines dating back to the year 2017.
- (ix) Imposition of service charge creates lack of clarity with respect to the price of food item and therefore, this amounts to an unfair trade practice.

### Decision of Court

- (i) The guidelines issued by CCPA under Section 18(2) (I) have to be mandatorily complied with.
- (ii) Service charge cannot be made compulsory or mandatory.
- (iii) Collection of service charge and use of different terminologies is misleading and deceptive and constitutes an unfair trade practice.
- (iv) Voluntary tipping for services is not barred. However, such tip cannot be added by default in the bill or invoice and should be left to a customer's discretion.
- (v) CCPA may consider permitting a change in nomenclature for Service Charge as the phrase "service charge" is misleading as consumers tend to confuse a service charge with service tax or GST. Terminology such as voluntary contribution, staff contribution, staff welfare fund or similar terminology should be used instead of "service charge".

### Comments

The Single Judge while upholding the guidelines with respect to levy of service charge as valid law, held that once CCPA determines a practice as an unfair trade practice, it has power to issue guidelines to protect consumer interest which are binding and enforceable.

The Single Judge held that a mere mention of collection of service charge on the menu does not give any clarity to a consumer about the price of food items. Further, the 'implied' contract of service charge entered between a consumer and a restaurant has been held to be unfair as most consumers do not notice service charge clause on the menu. Further, if a consumer does notice levy of service charge in the menu, they have little bargaining power *vis a vis* a restaurant. The Single Judge further held that while a restaurant has the liberty under Article 19(1)(g) of Constitution of India to decide the price of its food items or products taking into account raw material, salaries, expenditure, capital expenses on premises, it cannot levy charges over and above the displayed price.

The Judgment validates the power of the regulator to issue guidelines in terms of Section 18 of the Act and noted that the same would constitute law. The judgment is likely to shape the legal landscape surrounding consumer rights in the hospitality sector.

- Karun Mehta (Partner) & Yugam Taneja (Principal Associate)



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