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

Reserved on: 13th December, 2024

Date of Decision: 28th March, 2025

\+ **W.P.(C) 10683/2022 & CM APPLs.31033/2022, 45891/2023**

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

Through: Dr. Lalit Bhasin, Ms. Nina Gupta, Ms. Ananya Marwah, Mr. Devvrat Tiwari and Mr. Ajay Pratap Singh, Advs. (M: 7709842926).

versus

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

Through: Mr. Chetan Sharma, ASG with Mr. Sandeep Mahapatra, CGSC, Mr. Ashish Dixit, CGSC with Mr. Abhinav Bansal, Mr. Vikramaditya Singh, Tribhuvan, Mr. Shubham Sharma, Mr. Saurabh Tripathi, Mr. Amit Gupta, Mr. Ishan Malhotra, Mr. Chandan, Advs. Mr. Deepak Tanwar, G.P. & Mr. Shivam Tiwari, Advs.
Mr. Kiritman Singh, Sr. Adv. for UOI.

\+ **W.P.(C) 10867/2022 & CM APPLs.31645/2022, 38599/2022, 23175/2024**

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

Through: Mr. Sameer Parekh, Mr. Sumit Goel, Ms. Sonal Gupta, Ms. Swati Bhardwaj, Mr. Abhishek Thakral, Advs. (M:9178681904)

versus

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

Through: Mr. Chetan Sharma, ASG with Mr. Sandeep Mahapatra, CGSC, Mr. Ashish Dixit, CGSC with Mr. Abhinav Bansal, Mr. Vikramaditya Singh, Tribhuvan, Mr. Shubham Sharma, Mr. Saurabh Tripathi, Mr. Amit Gupta, Mr. Ishan Malhotra, Mr. Chandan, Advs. Mr. Deepak Tanwar, G.P. & Mr. Shivam Tiwari, Advs.
Mr. Kirtiman Singh, Sr. Adv. for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. ***Whether the collection of mandatory Service Charge by restaurants and other establishments is permissible under the Consumer Protection Act, 2019 (hereinafter, the 'CPA, 2019')?***

Background:

3. The Central Consumer Protection Authority *('CCPA')* established under Section 10 of the CPA, 2019 received several complaints regarding restaurants and hotels *(hereinafter, the 'restaurant establishments')* charging 'Service Charge' over and above the cost of the food items. This Charge in the range of 5-20% in lieu of *'Tip'* or *'Gratuity'*, was being collected from consumers on a compulsory basis. In addition, Goods and Services Tax *('GST')* was charged on the said service charge, resulting in substantial burden consumers. The CCPA then issued guidelines to prevent unfair trade practices and protect consumer interest with regard to levying of service charge, on 4th

July, 2022. The same are extracted hereinbelow for ready reference:

> *"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.*
>
> *5. It is understood that a tip or gratuity is towards hospitality received beyond basic minimum service contracted between the consumer and the hotel management, and constitutes a separate transaction between the consumer and staff of the hotel or restaurant, at the consumer's discretion. Only after completing the meal, a consumer is in a position to assess the quality and service and decide whether or not to pay tip or gratuity and if so, how much. The decision to pay tip or gratuity by a consumer does not arise merely by entering the restaurant or placing an order. Therefore, service charge cannot be added in the bill involuntarily, without allowing consumers the choice or discretion to decide whether they want to pay such charge or not.*

6. Further, any restriction of entry based on collection of service charge amounts to a trade practice which imposes an unjustified cost on the customer by way of forcing him/her to pay service charge as a condition precedent to placing order of food and beverages, and falls under restrictive trade practice as defined under Section 2 (41) of the Act.

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.

8. The aforementioned guidelines shall be in addition to and not in derogation of the guidelines dated 21.04.2017 published by the Department of Consumer Affairs.

9. If any consumer finds that a hotel or restaurant is

levying service charge in violation to the above mentioned guidelines, a consumer may:-

(i) Make a request to the concerned hotel or restaurant to remove service charge from the bill amount.

(ii) Lodge a complaint on the National Consumer Helpline (NCH), which works as an alternate dispute redressal mechanism at the pre-litigation level by calling 1915 or through the NCH mobile app.

(iii) File a complaint against unfair trade practice with the Consumer Commission. The Complaint can also be filed electronically through e-daakhil portal www.edaakhil.nic.in for its speedy and effective redressal.

(iv) Submit a complaint to the District Collector of the concerned district for investigation and subsequent proceeding by the CCPA. The complaint may also be sent to the CCPA by e-mail at com-ccpa@nic.in."
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4. In effect the above guidelines prescribed as under –

- That restaurant establishments are prohibited from adding service charge to the bills of the consumers automatically or by default;
- That payment of service charge cannot be forced by such establishments and it ought to be made optional.
- That consent for payment of service charge cannot be made a basis for permitting entry of consumers into the restaurant establishments;
- That no GST can be charged on the service charge amount.
- That service charge shall not be collected from consumers by any other name.

The above guidelines are under challenge in these two petitions.

Facts:

5. The first petition being ***W.P.(C) 10683/2022*** is filed by the National Restaurants Association of India *('NRAI')* through its Secretary General, along with two other office bearers. The second petition being, ***W.P.(C) 10867/2022*** has been filed on behalf of the Federation of Hotels and Restaurants Association of India *('FHRAI')* along with two members as co-Petitioners.

6. The Petitioners, vide the present petitions, *inter alia* seek issuance of an appropriate writ under Article 226 of the Constitution of India quashing/setting-aside of the guidelines dated 4th July, 2022 issued by the CCPA.

7. The Petitioners together, claim to represent the interest of a substantial number of restaurant establishments across the country. NRAI is stated to be an association of restaurant owning companies and other entities which own restaurants and other food establishments. As per the writ petition, NRAI claims that it represents the voice of the restaurant industry as it represents lakhs of restaurants in India. According to the Association, it has 7,000 restaurants in India and 2,500 member outlets in the Delhi NCR.

8. FHRAI is an organization which, according to the writ petition, represents the interest of 55,000 hotels and 5,00,000 restaurants across the country.

9. The facts that can be gleaned from both the petitions are that on 14th December, 2016 the Ministry of Consumer Affairs, Food and Public Distribution had issued a letter regarding levy of service charge by hotels and restaurants to the Secretary, Food, Civil Supplies and Consumer Protection of all States and Union Territories. The said letter is extracted hereinunder for a

ready reference:

> *"Sir/Madam,*
> *I am directed to say that it has come to the notice of this Ministry through a number of complaints from consumers received in the National Consumer Helpline that hotels and restaurants are following the practice of charging 'service charge' in the range of 5-20%, in lieu of tips. A consumer is forced to pay this charge irrespective of the kind of service provided to him. The consumers are also required to pay service tax on this service charge so collected by the hotels and restaurants.*
> *2. The Consumer Protection Ac, 1986 provides that a trade practice which, for the purpose of promoting the sale, use or the supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice, is to be treated as an unfair trade practice. The said Act further provides that a consumer can make a complaint to the appropriate consumer forum established under the Act against*
> *(i) an unfair trade practice adopted by any trader or service provider*
> *(ii) the services hired or availed of, suffered from deficiency in any respect (iii) a trader or service provider, as the case may be, has charged for the goods or for the services a price in excess of the price. (a) fixed by or under any law for the time being enforce. (b) displayed on the goods or any package containing such goods, (c) displayed on the price list exhibited by him or under any law for the time being in force or (d) agreed between the parties.*
> *3. The Hotel Association of India. Bhikaji Cama Place, New Delhi, on the matter being taken up with them, observed that the service charge is completely discretionary. Should a customer be dissatisfied with the dining experience he/she can have it waived off. Therefore, it is deemed to be accepted voluntarily.*
> *4. In the circumstances, it is requested that the State*

> *Government may sensitize the companies, hotels and restaurants in the state regarding aforementioned provisions of the Consumer Protection Act, Information may also be disseminated through display at the appropriate place in the hotel/restaurants that the 'service charges" are discretionary/ voluntarily and a consumer dissatisfied with the services can have it waived off.*
>
> *5. Further, a number of consumers have also submitted complaints to the effect that most of the retail outlets do not issue a bill to the consumer in respect of the goods bought by him. The consumer has a right to a bill for the goods bought by him. The State Government may also issue instructions to the retail outlets in the state to invariably issue a bill to a consumer for the purchases made by him."*

10. As per the above letter, the Ministry, while taking cognizance of the collection of Service Charge, relied upon the stand of the Hotel Association of India that the payment of the said charge is discretionary. The Ministry thus instructed the Secretary, Food, Civil Supplies and Consumer Protection of all States and Union Territories, that this position be publicised and information be disseminated to the effect that service charge can be waived off.

11. In effect, the said letter recognised that payment of service charge, charged by the restaurant establishments is within the discretion of the consumer and waiver can be sought.

12. Pursuant to the letter dated 14th December, 2016 an advisory was issued by the Ministry of Consumer Affairs, Food and Public Distribution on 2nd January, 2017 to the effect that service charge is a voluntary charge that can be waived off by a consumer, dissatisfied with the service of the restaurant establishment. The relevant portion of the same is extracted hereinunder:

> *"The Department of Consumer Affairs has asked the*

> *State Governments to sensitize the companies, hotels and restaurants in the states regarding aforementioned provisions of the Consumer Protection Act, 1986 and also to advise the Hotels/Restaurants to disseminate information through display at the appropriate place in the hotels/restaurants that the* ***'service charges' are discretionary/ voluntary*** *and a consumer dissatisfied with the services can have it waived off."*

13. A reply to the letter dated 14th December, 2016 and the advisory published on 2nd January, 2017 by the Department of Consumer Affairs was sent by the NRAI to the Department of Consumer Affairs on 4th January, 2017. However, on 21st April, 2017 an advisory was again issued by the Department of Consumer Affairs, *inter alia*, stating that service charge is to be paid at the discretion of the customer. The relevant portion of the same is extracted hereinunder:

> *"**GUIDELINES ON FAIR TRADE PRACTICES RELATED TO CHARGING OF SERVICE CHARGE FROM CONSUMERS BY HOTELS/RESTAURANTS***
>
> *Whereas, the Department of Consumer Affairs. Government of India is mandated to ensure that consumers are protected as per the provisions of the Consumer Protection Act, 1986 (hereinafter referred as 'The Act');*
>
> *Whereas, a customer visiting a hotel or restaurant for availing its hospitality, which includes buying the food & beverages and availing services connected therewith or incidental thereto for consideration, falls under the definition of consumer as per the Act;*
>
> *Whereas, it has come to the notice of this Department that some hotels and restaurants are charging tips/gratuities from the customers without their express consent in the name of service charges;*
>
> *Whereas, it has also come to the notice of this*

Department that some customers have been paying tips to waiters in addition to service charges under the mistaken impression that service charge is a part of taxes;

Whereas, it has also come to the notice of this Department that in some cases hotels/restaurants are restraining customers from entering the premises if they are not in prior agreement to pay the mandatory service charge:

Whereas, public interest has arisen due to a number of grievances reported against mandatory levy of service charges by the hotels and restaurants;

Now therefore, the Government considers it appropriate to clearly distinguish between the fair and unfair trade practices in respect of service charges, charged by the hotels/restaurants. and issues the following guidelines:

(1) A component of service is inherent in provision of food and beverages ordered by a customer. Pricing of the product therefore is expected to cover both the goods and service components.

(2) Placing of an order by a customer amounts to his/her agreement to pay the prices displayed on the menu card along with the applicable taxes. Charging for anything other than the afore-mentioned, without express consent of the customer, would amount to unfair trade practice as defined under the Act.

(3) Tip or gratuity paid by a customer is towards hospitality received by him/her, beyond the basic minimum service already contracted between him/her and the hotel management. It is a separate transaction between the customer and the staff of the hotel or restaurant. which is entered into at the customer's discretion.

(4) The point of time when a customer decides to give a tip/gratuity is not when he/she enters the hotel/restaurant and also not when he/she places his/her order. It is only after completing the meal that the

customer is in a position to assess quality of service, and decide whether or not to pay a tip/gratuity and if so, how much. Therefore, if a hotel/restaurant considers that entry of a customer to a hotel/restaurant amounts to his/her implied consent to pay a fixed amount of service charge, it is not correct. Further, any restriction of entry based on this amounts to a trade practice which imposes an unjustified cost on the customer by way of forcing him/her to pay service charge as condition precedent to placing order of food and beverages. and as such it falls under restrictive trade practice as defined under section 2(1)(nnn) of the Act

(5) In view of the above, the bill presented to the customer may clearly display that service charge is voluntary, and the service charge column of the bill may be left blank for the customer to fill up before making payment.

(6) A customer is entitled to exercise his/her rights as a consumer, to be heard and redressed under provisions of the Act in case of unfair/restrictive trade practices and can approach a Consumer Disputes Redressal Commission/Forum of appropriate jurisdiction."

14. On 20th May, 2022 the Department of Consumer Affairs sent a letter to the President, NRAI informing that a meeting will be conducted on 2nd June, 2022 to discuss the nature of implementation of service charge in the restaurant establishments of India. The same is extracted hereunder for ready reference:

"It has come to my attention through media reports and grievances registered by consumers on the National Consumer Helpline (NCH) that restaurants and eateries are collecting service charge from consumers by default, even though collection of any such charge is voluntary and at the discretion of consumers and not mandatory as per law.

2. Due to this, consumers are forced to pay service charge, often fixed at arbitrarily high rates by restaurants. Consumers are also being falsely misled on the legality of such charges and harassed by restaurants on making a request to remove such charges from the bill amount

3. it is relevant to mention that the Department of Consumer Affairs has already published guidelines dated 21.04.2017 on charging of service charge by hotels/restaurants. The guidelines note that entry of a customer in a restaurant cannot be itself be construed as a consent to pay service charge. Any restriction on entry on the consumer by way of forcing her/him to pay service charge as a condition percent to placing an order amounts to 'restrictive trade practice' under the Consumer Protection Act.

4. In this regard, the Department of Consumer Affairs is holding a meeting on 2nd June, 2022 at 1200 Hrs to discuss the following issues affecting consumers in India:-

- *Making service charge compulsory by hotels/restaurants*
- *Adding service charge in the bill in the guise of some other fee or charge.*
- *Suppressing from consumers that paying service charge is optional and voluntary.*
- *Embarrassing consumers in case they resist from paying service charge*

5. Since this issue impacts consumers at large on a daily basis and has significant ramification on the rights of consumers, it is necessary that it is examined with closer scrutiny and detail. Therefore, you are requested to attend the meeting as per the above-mentioned schedule."

15. On 23rd May, 2022 the Department of Consumer Affairs issued a press release, wherein a meeting was called by the Department with stakeholders to discuss the levying of service charge by the restaurant establishments. The

said circular is extracted below:

> *"The Department of Consumer Affairs (DoCA) has scheduled a meeting on 2nd June, 2022 with the National Restaurant Association of India to discuss the issues pertaining to Service Charge levied by restaurants. The meeting follows as a result of DoCA taking notice of a number of media reports as well as grievances registered by consumers on the National Consumer Helpline (NCH). In a letter written by Shri Rohit Kumar Singh, Secretary, Department of Consumer Affairs to President, National Restaurant Association of India, it has been pointed out that the restaurants and eateries are collecting service charge from consumers by default, even though collection of any such charge is Voluntary and at the discretion of consumers and not mandatory as per law.*
>
> *It has been pointed out in the letter that the consumers are forced to pay service charge, often fixed at arbitrarily high rates by restaurants. Consumers are also being falsely misled on the legality of such charges and harassed by restaurants on making a request to remove such charges from the bill amount. "Since this issue impacts consumers at large on a daily basis and has significant ramification on the rights of consumers, the department construed it necessary to examine it with closer scrutiny and detail", the letter further adds.*
>
> *The following issues pertaining to complaints by consumers would be discussed during the meeting.*
>
> - *Restaurants making service charge compulsory*
> - *Adding service charge in the bill in the guise of some other fee or charge.*
> - *Suppressing from consumers that paying service charge is optional and voluntary.*
> - *Embarrassing consumers in case they resist from paying service charge.*
>
> *It is relevant to mention that the Department of Consumer Affairs has already published guidelines dated 21.04.2017 on charging of service charge by*

hotels/restaurants. The guidelines note that entry of a customer in a restaurant cannot be itself be construed as a consent to pay service charge. Any restriction on entry on the consumer by way of forcing her/him to pay service charge as a condition percent to placing an order amount to 'restrictive trade practice' under the Consumer Protection Act.

The guidelines clearly mention that placing of an order by a customer amount to his/her agreement to pay the prices displayed on the menu card along with the applicable taxes. Charging for anything other than the afore- mentioned. without express consent of the customer, would amount to unfair trade practice as defined under the Act.

As per the guidelines, a customer is entitled to exercise his/her rights as a consumer to be heard and redressed under provisions of the Act in case of unfair/restrictive trade practices. Consumers can approach a Consumer Disputes Redressal Commission / Forum of appropriate jurisdiction."

16. Further to the letter dated 20th May, 2022 and the press release dated 23rd May, 2022, a meeting was conducted by the Ministry with the stakeholders on 2nd June, 2022. On the said date, FHRAI made a representation to the Department of Consumer Affairs wherein, it explained the significance of service charge for the hospitality sector.

17. The Department of Consumer Affairs, then issued a press release dated 2nd June 2022, *inter alia* stating that the framework of service charge, as charged by the restaurant establishments requires a complete overhaul so as to ensure strict compliance by the stakeholders concerned with regard to the nature of levying service charge by the establishments.

18. On 4th July, 2022 the impugned guidelines were then issued by CCPA *inter alia* clarifying the nature of implementation of the service charge. The

relevant portion of the Guidelines are extracted above in paragraph 3.

19. Further, on 6th July, 2022 the Ministry of Consumer Affairs, Food and Public Distribution issued a communication to the District Collectors of all States and Union Territories *inter alia* intimating them that levying of service charge in violation of the guidelines dated 4th July, 2022 would be an unfair trade practice under the contours of the CPA, 2019. The communication dated 6th July, 2022 is extracted hereinunder for ready reference:

> *"As you might be aware, the Central Consumer Protection Authority (CCPA), has recently issued guidelines under Section 18(2)(1) of the Consumer Protection Act, 2019 (" hereinafter called the Act") to prevent unfair trade practices and protection of consumer interest with regard to levy of service charge in hotels and restaurants. The guidelines came into effect from 04.07.2022, i.e., on the day they were issued. The guidelines are attached as* ***Annexure - I****.*
>
> *2. The guidelines stipulates the following:*
>
> - *Hotels or restaurants shall not add service charge automatically or by default in the food bill.*
> - *No collection of service charge shall be done by any other name.*
> - *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.*
> - *No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.*
> - *Service charge shall not be collected by adding it along with the food bill and levying GST on the total amount.*
>
> *3. The guidelines include the actions that consumers can take in case of a violation of the guidelines by*

> *hotels/restaurants, including submission of a complaint to the District Collector of the concerned district for investigation and subsequent proceeding by the CCPA.*
> *4. It may be mentioned that under **Section 17** of the Act, a complaint relating to violation of consumer rights or unfair trade practices which is prejudicial to the interests of consumers **as a class** may be forwarded in writing or in electronic mode to the District Collector. Further, under **Section 16** of the Act, on a complaint or on a reference made to him by the Central Authority, the District Collector may inquire into or investigate complaints regarding violation of rights of consumers as a class within his jurisdiction and submit his report to CCPA."*

20. According to the Petitioners, the impugned guidelines issued by the CCPA are violative of the rights of its members. Accordingly, it is prayed that the guidelines dated 4th July, 2022 read along with the communication issued on 6th July, 2022 by the CCPA to all the District Collectors be set aside.

Brief Case of the Petitioners:

21. The brief case of the Petitioners is that the impugned guidelines are arbitrary, untenable and are liable to be set aside. The stand of both the Petitioners is that the collection of service charge has been prevalent in the hospitality industry for more than 80 years and the same is valid as there exists no law that prohibits the Petitioners from charging the same.

22. Sometime in 2016, the Department of Consumer Affairs had issued a letter dated 14th December, 2016, as per which, information was directed to be disseminated that the payment of service charge is discretionary and voluntary at the behest of the consumer and that the same can be waived off if the consumer is dissatisfied with the service. This was followed by another

advisory by the Department of Consumer Affairs dated 21st April, 2017 wherein again the Department sought to direct that the bills raised by establishments ought to display clearly in the menu card that payment of service charge is voluntary.

23. According to the Petitioners, after the advisory dated 21st April, 2017, the Petitioners and their members continued to collect service charge from consumers. It is their case that service charge is recognized as valid, in various decisions. Further, the CCPA has no power or jurisdiction under the CPA, 2019 to issue such guidelines which impinge upon the Petitioners' rights to carry on their businesses as provided under Articles 14 and 19 of the Constitution of India.

24. It is further, the case of the Petitioners, that the levy of service charge is purely the discretion of the management of the establishment. The said charges are used for the benefit of staff, labour, utility workers, backend workers, etc. As per the law laid down in the Constitution of India, the Government has no authority to interfere in the decision of the owner of the establishment to levy service charge, which is prevalent in most countries in the world. The same has also been recognized by the Monopolies and Restrictive Trade Practices Commission, New Delhi and other Courts as well as in various decisions. Hence, the guidelines are contrary to law and deserve to be quashed.

Proceedings in the present writ petitions:

25. Notice in the ***NRAI writ (supra)*** was issued on 20th July, 2022. On the said date, the Court had *prima facie* come to the conclusion that the directions contained in paragraph 7 of the guidelines shall remain stayed, subject to certain conditions. The operative portion of the said interim order is set out

below:

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

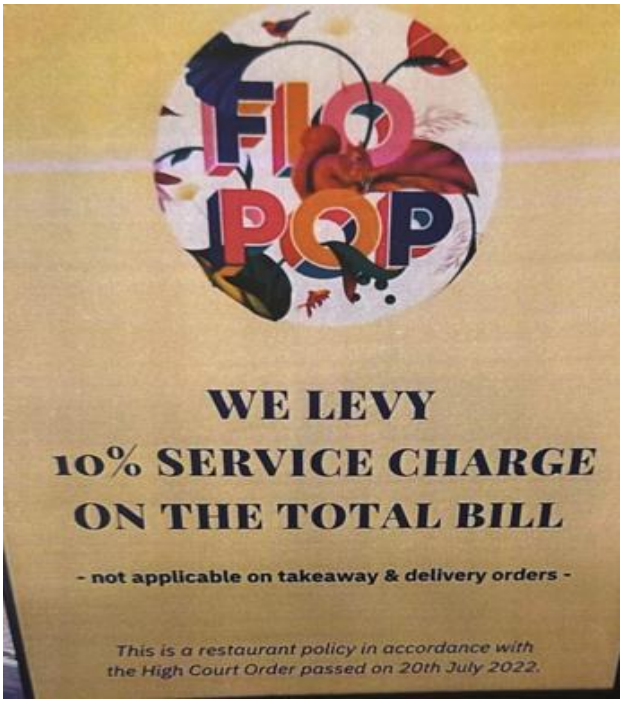
26. The said interim order was challenged before the ld. Division Bench, which, vide order dated 18th August, 2022 directed as under:

> *"Learned Additional Solicitor General has vehemently argued before this Court that practically no opportunity for filing reply was granted to the Union of India, and an interim order has been passed by the Learned Single Judge. The interim order deserves to be set aside. He has argued the matters on the merits also but the fact remains that there was no reply before the Learned Single Judge either to the Applications for grant of interim relief or to the main Writ Petitions.* ***Therefore, without averting to the merits of the case, liberty is granted to the Union of India to file a reply to the Application for grant of interim relief as well as to the main Writ Petition, and they shall certainly be free to file an Application for vacating the stay in the petitions as well.***
>
> *The Office is directed to list the matters i.e. W.P.(C) No. 10683/2022 and W.P.(C) No. 10867/2022 immediately after 10 days before the Learned Single*

Judge on 31.08.2022.

The Leamed Single Judge is requested to pass appropriate order in respect of the Application for vacating Stay/ Final Hearing in accordance with law without being influenced by the interim order passed by him."

27. On 15th February, 2023, certain practices adopted by the restaurant establishments were brought to the notice of the Court wherein the stand of the Respondents was that the interim order dated 20th July, 2022 was being used by the restaurant establishments, as the basis for charging service charge, by displaying it both, in the menu card as also the display boards outside their establishments. To substantiate this stand, the Respondents have placed on record a sample image of a restaurant establishment following this practice. The same is extracted hereinbelow for ready reference:



28. Certain examples of restaurant establishments such as the Punjab Grill,

The Beer Cafe, The Urban Foundry & Distillery, etc. were cited before the Court to show how the restaurant establishments were using the interim order dated 20th July, 2022, as the basis for charging service charge. Grievances raised by consumers, pertaining to the same were registered in the National Consumer Helpline from 21st July,2022 to 29th October, 2022. The same are extracted hereinunder for a ready reference:

> *"1. Punjab Grill Responds as "**It is wrong to state that the service charge is charged without the customer consent and customer is forced to pay the same. It is very clearly mentioned in our menu cards that we charge service charge and if the customer asks us to remove the said service charge component from the bill than we happily remove the same. But the customer paid the bill without any protest or demur on service charge and with his consent. Please note, Hon'ble Delhi High Court on 20th July, 2022, stayed the guidelines issued by CCPA dated 4th July 2022 on service charge and levying service charge by restaurants is completely legal, if prominently mentioned on the Menu Cards.** Therefore, service charge is not charged illegally and is as per the norms issued by the Government.*
>
> *2. The Beer Cafe Responds as "**In line with the directions of the Hon'ble Court of Delhi as per order dated 20.07.2022, BTB Marketing Private Limited has complied with the guidelines laid down for all the restaurants in PARA 9 of the order. We have mentioned prominently on our menu and we have also put up stickers everywhere in our premises, where it is expedient to be seen by the customer, that We levy 10% Service Charge. Please note that the same order has put a stay on the order of the CCPA dated 4th July, 2022.***
>
> *3. The Urban Foundry Respond as "**Sir, Information regarding levying of service charge is listed on the***

menu as well as at prominent place in the restaurant. the Hon. Delhi high court order court no w.p.(c) 10683/2022 CM, APPL 31033/2022 Dt. 20.07.2022 which was shown, it lists the guidelines for levying the charge & information around the same. The guest was informed about the same before levying the charge.

4. *Distillery Responds as* ***"it is submitted that we levy a 10% service charge on all invoices. The said charge ensures well being of our staff which diligently serves the consumers at the cafe. The said levy of service charge @ 10% has been priorly intimated to the consumers by way of specific mention on our menu card (reference picture attached) and the said charge is not hidden at the time of placing of an order by the consider and the consumer willing and consciously makes a choice of ordering from the menu despite knowing the fact that we levy service charge mandatorily. The said levy is also in line with the interim order passed by the Hon'ble High Court, Delhi allowing restaurants to collect service charges by way of prior intimation to the consumers.***

5. *Vapour Pub & Brewery Respond as* ***"Our policy was clear. If a guest asks for service charge removal we should remove it without question. Now attached an article of high court stay and say the matter is sub-judice and appropriate course of action will be followed as per directions of the Honourable court"***

29. Considering these submissions, on 12th April, 2023, a detailed order was passed to the following effect:

> *"9. Considering the submissions made and the concerns raised on both sides, the following directions are issued:*
>
> *i. At the outset, it is noticed that both these petitions have been preferred by associations/federations of hotels and restaurants. In order to have clarity as to the members qua whom the present writ petitions*

have been preferred, taking into consideration, orders passed in ***WP(C) 3324/1999 titled 'Kuber Times Emp. Assn. v. State & Ors.'****, both the associations/federations shall file a complete list of all their members who are supporting the present writ petitions. The said list shall be filed by 30th April 2023. The Registry to compute the court fee which would be payable, which shall also be informed to the Petitioners. The necessary court fee shall then be deposited by the Petitioners.*

ii. *Ld. counsels for the associations/federations have submitted that they have lakhs of members. In view of the fact that both these associations/federations have preferred these writ petitions, this Court is of the opinion that the associations/federations ought to consider the following aspects and place their stand before the Court:*

   a. The percentage of members of the Petitioners who impose service charge as a mandatory condition in their bills.

   b. Whether the said members and the associations/federations would have any objection in the term ***`Service Charge'*** *being replaced with alternative terminology so as to prevent confusion in the minds of the consumer that the same is not a Government levy. Some terminologies that could be considered are '****Staff welfare fund'****,* ***'Staff welfare contribution'****,* ***'Staff charges'****,* ***'Staff welfare charges'****, etc. or any other alternative terminology.*

   c. The percentage of members who are willing to make service charge as voluntary and not mandatory, with option being given to the consumers to make their contribution to the extent that they are

voluntarily willing subject to a maximum percentage that may be charged."

30. As can be seen from the above order, the Petitioners were directed to give a complete list of their members and further details regarding the percentage of members of the Petitioners who impose service charge as a mandatory condition in their bills. Certain alternative terminology, to be used in place of 'service charge' was also suggested.

31. Pursuant to the above order, affidavits were filed by NRAI and FHRAI. On 5th September, 2023 the Court perused the said affidavits, and recorded the following facts:

"5. Ld. Counsels for both the Petitioners claim that the affidavits in terms of the order dated 12th April, 2023 have been placed on record by the National Restaurant Association of India ('NRAI') and Federation of Hotel and Restaurant Associations of India ('FHRAI'). The position that emerges after a perusal of the said affidavits is as under:

(i) Insofar as the NRAI is concerned, as per the affidavit filed by Mr. Prakul Kumar, Secretary General of NRAI, there are a total of about 1100 members, whose list has been placed on record. As per the said affidavit, 80% of the NRAI members impose service charge on the customers as a mandatory condition. In the said affidavit, it has been stated that the members of NRAI are not willing to change the terminology from 'Service Charge' to any of the alternatives proposed by the Court as put to them in the order dated 12th April, 2023. The minutes of the meeting of the Managing Committee dated 18th April, 2023 of NRAI reveals that the conclusion that the said association has reached that the terminology of service charge cannot be changed. It is further

claimed in the said affidavit by the NRAI that there is also no scope of confusion between the terms 'Service Tax' and 'Service Charge' as the Service Tax is no longer being imposed by restaurants and hotels.

(ii) Insofar as FHRAI is concerned, the list of members that has been placed on record is totalling to 3327 members. As per the affidavit filed by Mr. Jaison Chacko – Secretary General of FHRAI, amongst the members of FHRAI, there is no uniformity or consistency being followed in respect of 'Service Charge' - some members charge 'Service Charge' and some do not. However, it is specifically stated that the members who are charging Service Charge, charge the same compulsorily from their customers and do not give an option of paying the same or not."

32. The Court then, on 5th September, 2023 crystallized the issues for determination as under:

> *" 8. In the opinion of this Court, there are four major issues which need to be considered –*
> *(i) Whether the CCPA can issue the impugned directions to hotels and restaurants;*
> *(ii) Whether hotels and restaurants can* ***`levy'*** *service charge on customers;*
> *(iii) Whether the service charge can be made compulsorily payable by customers;*
> *(iv) Whether the said amount collected can be called `Service Charge'."*

33. On the said date, it was also clarified on behalf of the FHRAI that its members are willing to change the terminology with respect to the restaurant establishments collecting a charge on service provided. It was submitted that the members of FHRAI are willing to change the terminology from 'Service

Charge' to 'Staff Contribution'. The relevant portion of the order dated 5th September, 2023 is recorded hereinunder:

> *"9. Insofar as the FHRAI is concerned, the submission of ld. Sr. Counsel on behalf of FHRAI that its members are willing to change the terminology from 'Service Charge' to 'Staff Contribution' is recorded. Henceforth, the said terminology shall be used by FHRAI's members who are collecting the same. However, Mr. Bhasin, ld. Counsel submits that the members of NRAI are not willing to change the terminology from 'Service Charge' to any other terminology. The stand of NRAI is that the 'Service Charge' which is being imposed currently, has been considered in a number of decisions and thus, the same would require consideration."*

34. As recorded in the order dated 5th September, 2023, the FHRAI made a submission that its members are willing to change the terminology for charging their customers for service, from *'service charge'* to *'staff contribution'*. However, NRAI was not willing to make the said change. On the said date, therefore, the following observations were made:

> *"10. At this stage, the Court notes that it is already 4:45 pm. The matter would now require to be heard further. However, considering that the issues raised would affect customers across the country, the matter would be taken up expeditiously. In view of the submissions made in Court today as also in the affidavits by the two associations, in the meantime, while the Court considers this petition, the following interim directions are issued:*
>
> > *(i) That the members of FHRAI, who are collecting the charges, shall with immediate effect cease the usage of the term 'Service Charge' and only use the terminology 'Staff Contribution' for the amount being charged as 'Service Charge'*

currently;

(ii) The said amount being charged as 'Staff Contribution' by members of FHRAI shall not be more than 10% of the total bill amount excluding the GST component;

(iii) In case of establishments mentioned in (i) above, the menu cards shall specify in bold that after the payment of 'Staff Contribution', no further tip is necessary to be paid to the establishment/servers/restaurant staff;

11. The above is merely an interim order and directions, which shall be subject to further orders in the writ petitions. The above order shall not be construed as an approval of the charges being collected, in as much as the legality of the collection of such charges is to be adjudicated by this Court."

35. The matter was then taken up on 11th March, 2024. During the course of arguments on 11th March, 2024, it was brought to the notice of the Court that the FHRAI in its representation dated 24th June, 2022 had clearly taken a stand that service charge payment is the prerogative of the customer or the guest. Ld. Counsel for FHRAI was therefore directed to seek instructions in this regard. The relevant portion of the said order is set out below:

"7. Today, Mr. Parekh, ld. Counsel has continued his submissions. During his submissions, it has been his stand that once a customer is informed of the payment of service charge, the same would be compulsorily payable. After the customer has entered the premises and has availed of the services, there is no option for the customer but to pay. This position is countered by Mr. Sandeep Kumar Mahapatra and Mr. Kirtiman Singh, the ld. CGSCs for the Union of India who rely upon the representation dated 24th June, 2022 issued by the

FHRAI to the Minister of Tourism and Culture, where the stand taken is that service charge is in the nature of a tip or a gratuity and it is the prerogative of the customer whether to pay it or not. The relevant extracts of the representation dated 24th June, 2022 made by FHRAI are set out below:

> *"In simple words, the Service Charge is an amount that is added to customer's bill in a restaurant to pay for the services of the persons who are involved in serving the food on the table. **It is also colloquially known as "tip" or "gratuity".** A Service Charge is a solicitation of a nominal additional charge for providing a delightful and memorable experience to the customers.*
>
> *xxx xxx xxx*
>
> *However, Service Charge of a restaurant is a voluntary fee paid by the customer which is disclosed well in advance before placing an order. Also, the same is clearly included as a separate heading in the bill as a "Charge", and not as a "Tax". Service Charge is neither a hidden charge nor a compulsory fee in any guise as the restaurants maintain utmost transparency with regard to the amount, the rate and the purpose of the charge. It is shown separately in the final bill and **payment of the same is up to the prerogative of customer / guest.**"*

8. In response to the above reference to the representation of FHRAI, Mr. Parekh, ld. Counsel submits that his client's stand ought to be considered from the representation dated 2nd June, 2023. However, he would like to seek instructions insofar as the representation 24th June, 2022 is concerned."

36. An affidavit was thereafter filed on 10th April, 2024. The same was

taken on record on 23rd April, 2024. On the said date, Mr. Jaison Chacko, Secretary General of the FHRAI was present in Court. He confirmed that the signatory of the letter dated 24th June, 2024 *i.e.*, Mr. Gurbaxish Singh Kohli was the Vice-President of the FHRAI for a period of four years. It was confirmed that he had signed the said letter. However, the stand of the FHRAI was that the statements made in the said letter ought not to be taken in isolation.

37. Thereafter, the matters were heard from time to time. Submissions made by counsel for the parties are recorded as under: -

Submissions on behalf of the Petitioners:

38. Ld. Counsels - Mr. Lalit Bhasin and Mr. Sameer Parekh, appearing on behalf of the Petitioners submit as under:

38.1. The impugned guidelines dated 4th July, 2022 issued by the CCPA impinge upon the rights of the Petitioners guaranteed under ***Article 19(1)(g)*** of the Constitution of India inasmuch as it interferes with the right to trade which is conferred upon the owners of such establishments.

38.2. The establishment ought to have the freedom to price its goods in the manner it chooses, either by setting a price for the food product itself or by distributing the cost between the price of the food product and the service charge.

38.3. So long as the customer of such establishment is informed that the payment of service charge is compulsory, by way of displaying it both on the menu car as also the display board, it becomes a contractual issue between the restaurant establishment and the consumer.

38.4. The service charge component is a major component in the negotiation of wages with the employees of these establishments and, thus, the same ought not to be interfered with in this manner by the Authority established under the CPA, 2019.

38.5. Reference has been made to Sections 10, 15, 16, 18, 20, 21 & 24 of the CPA, 2019 to submit that the impugned guidelines have been issued under Section 18 of the act without affording a preliminary hearing. It is, however, admitted that there was a stakeholder consultation prior to the issuance of the guidelines.

38.6. Reference is made to Section 20 of the CPA, 2019 to argue that in cases wherein the CCPA is of the opinion that any trade practice is unfair or prejudicial to consumer interest, a proper hearing must be given by the said Authority, which would then be appealable to the National Commission under Section 24 of the CPA, 2019. The CCPA, in the present case, has not followed this process and thus there is violation of the principles of natural justice.

38.7. The impugned guidelines are operating *in rem* and not *qua* any category of restaurant establishments.

38.8. For the guidelines to have teeth, the impugned guidelines ought to have been enacted in the form of a law, either as a rule or as a regulation by the Central/State Government. Further, the CCPA has also not placed the same before the Parliament under Sections 101, 102, 104 and 105 of the CPA, 2019 and thus, the impugned guidelines have no mandate as per law.

38.9. The CCPA, by simply publishing the guidelines through a notification and further issuing directions to District Collectors, is in contravention

of the law. The said Authority has overreached its mandate under the scheme of the CPA, 2019. To circumvent the proper process for enacting a law, rule, or regulation, the Respondent has adopted this indirect method.

38.10. The aspect of service charge being imposed is a practice which has been continuing for the last 80 to 90 years. It has been repeatedly recognized by the Supreme Court and High Courts in various judicial decisions. The rationale behind imposing service charge or levying a service charge is in order to ensure equitable distribution of the tip amount which is paid by the consumer. So long as the menu of the restaurant establishment informs the customer prior to placing an order about the service charge, the service charge ought to be paid by the consumer.

38.11. Charges in the nature of service charge, have always been a matter of bargain and contract between management and the workmen. The charge is levied for the benefit of various workers and in fact, form part of the settlements which managements enter into with their workmen. Hence, the present matter is a contractual issue wherein the CCPA has no mandate.

38.12. The labour law jurisdiction is vested with the Labour Court, etc. which have repeatedly recognized service charge as being a component of charges collected by the management for the benefit of the workmen. The same is not governed by the CPA, 2019 but is part of the labour law jurisprudence. Further, settlements under the industrial disputes law are sacrosanct and any change brought about in this regard would affect a large number of establishments and the workmen with whom settlements have been entered into.

38.13. Reliance has been placed on a decision passed by the Supreme Court in ***Life Insurance Corporation of India v. D.J Bahadur (MANU/SC/0305/1980)*** to argue that settlements entered into between management and workmen are sacrosanct and an ordinance would not be operative so long as it is contrary to the settlement entered into. In this judgment, when an ordinance was issued in respect of bonus to be paid to the workmen, the Supreme Court held that the ordinance would not be operative as the same would be contrary to settlements which have been entered into by the management and the workmen.

38.14. The CCPA does not have the mandate to pass the impugned guidelines. Specific reference is made to paragraph 7 of the impugned guidelines dated 4th July, 2022 which prohibits automatic addition of service charge and states that service charge would not be collected by the establishments under any other name. Further, in paragraph 7.3, the guidelines state that service charge cannot be forced to be paid by the customer and that it should be made clear to the customer that the same is voluntary/optional at the discretion of the customer. These guidelines are entirely beyond the purview of the CCPA, as the definitions under the CPA, 2019 do not vest any such power in the CCPA to issue such guidelines. Reliance is placed upon Section 2(47) which defines unfair trade practices.

38.15. Service charge was a result of an expert committee report submitted by Mr. Diwan Chaman Lal, which recognized that service charges could be collected from consumers.

38.16. Reliance is placed upon Section 2(6) of the CPA,2019 to argue that if there is an agreement between the consumer and the establishment,

there can even be no complaint against such an establishment.

38.17. There are broadly two types of service charges, one is a known service charge, and the other is an unknown service charge. Insofar as the unknown service charge is concerned, which is included into other aspects of the bill, the Petitioners do not support the same. The stand of the Petitioners is that so long it is announced clearly on the menu card/display board that a service charge will be levied, the consumer, by choosing to consume food and enjoy the experience, implicitly agrees to it. Thus, an implicit contract exists between the establishment and the consumer, which cannot be overridden. Moreover, this implicit contract cannot give rise to a complaint, in terms of Section 2(6)(iv) of the CPA, 2019.

38.18. There are a large number of restaurant establishments which are run in the country and in comparison, thereto, the complaints which are stated to have been received by the Respondent are few in number.

38.19. The NCDRC as also the MRTP Commission have dealt with this very issue in various judgments, wherein it has clearly been observed that service charge is a recognized mode of collecting amounts for the benefit of the workmen. Ld. Counsels submit that specialized Tribunals having already taken a view and permitting service charges to be collected, the CCPA's jurisdiction would be completely untenable. Reliance is placed upon the following judgments to argue this proposition:

- ***Nitin Mittal vs. Pind Balluchi Restaurant (MANU/CF/0402/2012),***
- ***S. S. Ahuja vs. Pizza Express (MANU/MR/0105/2001)***.
- ***The Rambagh Palace Hotel, Jaipur v. The Rajasthan Hotel***

Workers' Union, Jaipur [(1976) 4 SCC 817]

- ***Management of Wenger and Co. v. Workmen. (AIR 1964 SC 86)***

38.20. Reliance is also In ***Rajinder Kumar Jain v. ACIT, Circle 27(1)*** (***MANU/ID/0193/2015)*** to argue that the recognized position in law is that the practice of payment of service charge to staff is not disputed by the revenue authorities.

38.21. To justify the extra charge collected by the restaurant establishments, reliance is placed on ***Federation of Hotel and Restaurant Association of India v. Union of India (UOI) and Ors. (MANU/SC/1624/2017).*** In this case, the question was whether the restaurant establishments could charge a higher price for bottled water dispensed by them. The Supreme Court *inter alia* observed that there is no bar on such sales. It is submitted that in the context of restaurant establishments, judicial recognition has been given to the fact that the food which is sold or the beverages which are made available are never considered to have been sold but are considered as a service and as part of the overall services which is provided to the customer. Thus, in the said case, the establishments were permitted to sell mineral water at prices which are higher than the Minimum Retail Price *('MRP')*.

38.22. Service charge is a valid component of charge collected from the customers for the benefit of employees and the workmen in the establishment. Service charge collected by the restaurant establishments has been recognised in various decisions:

- ***M/S Quality Inn Southern Star v. The Regional Director, Employees State, [(2014) 10 SCC 673]***
- ***Gulf Co. Ltd. v. Union of India [(2014) 10 SCC 673]***
- ***Commissioner of Income Tax v. ITC Ltd. [(2011) SCC OnLine***

Del 2215]

- ***ITC Limited Gurgaon v. Commissioner of I.T. (TDS) Delhi, AIR 2016 SC 2127***
- ***The Rambagh Palace Hotel, Jaipur v. The Rajasthan Hotel Worker's Union Jaipur, (supra)***

38.23 On the strength of all these decisions, it is submitted that service charges are a part and parcel of running of a hospitality establishment especially once the menu card makes it clear that the establishment would be charging the service charge.

38.24. Mr. Bhasin, ld. Counsel emphasises that the interests of customers who can afford to pay the service charge must be balanced against the interests of the workmen, who are in a much more vulnerable position.

38.25. The next submission is that the trade and industry across the world recognizes service charge as a uniform industry practice. The following authorities are referred to:

> *"The Art and Science of Modern Innkeeping by Jerome J. Vallen [pages 240-242]*
> *Hotel Accounts and Their Audit by Lawrence S. Fentou, FCA and Norman A. Fowler, FCA* published by the The Institute of Chartered Accountants in England and Wales:
> *"Service charges and Tips*
> *Service charges are often levied by a percentage addition to a guest's bill to represent gratuities to restaurant and room service staff. Sometimes such moneys are paid over to the staff by the hotel via the normal wages system or through the Tronc Master. In other cases staff are paid fixed rates irrespective of the service charges collected, or the or the tariff prices may be inclusive of service charges and VAT. Treatment of service charge income varies with each concern. The auditor should investigate the accounting treatment,*

and see that the policy is consistent from period to period."

38.26. Mr. Bhasin, ld. Counsel, refers to a book titled *'Industrial Relations Wage Fixation Hotels & Restaurants'* which, according to him, provides illustrations and examples of numerous labour awards that have recognized the collection of service charges for over 50 years.

38.27. Reliance is placed upon a prescription by the Wage Board which has uniformly prescribed levy of service charge for all for all hospitality establishments in Delhi. It specifies that the service charge should be imposed within the range of 5-10%.

38.28. The CCPA does not have the mandate to issue directions in the garb of guidelines. The CCPA while doing so, is in effect, exercising parallel authority of District & State Consumer Forums, which is contrary to the scheme of the CPA, 2019 itself. Further, even while issuing an order under Section 20 of the act, the CCPA has to give the party an opportunity to be heard, which has not been done in this case. Thus, the CCPA has no power to pass guidelines in rem and the question as to whether any practice is an unfair trade practice is to be decided by the District Magistrate Forum and not by the CCPA.

38.29. Executive and administrative instructions without the backing of a law cannot be enforced. Reliance is placed on the judgment ***Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. & Ors. [(2020) SCC OnLine Del 454]*** wherein the guidelines therein, were held to not have statutory backing and therefore not enforceable. Further, in the judgment, it was clarified that executive and administrative instructions cannot constitute law.

38.30. Under Section 2(6) of the CPA, 2019, a complaint can only be filed if the price of a commodity exceeds the agreed-upon price between the parties. Therefore, as long as establishments inform customers about the service charge by displaying it on the menu, no complaint can be registered under the CPA, 2019.

38.31. The right to set prices is a managerial function and cannot be interfered with. For example, a restaurant establishment that is air-conditioned or offers live music may charge slightly higher prices. This is the establishment's right, which cannot be undermined by the CCPA by way of issuing guidelines.

38.32. The present case does not fulfil the parameters of 'unfair trade practice' as laid out under Section 2(47) of the CPA, 2019. The basic pre-condition to constitute an unfair trade practice, under the Act, is for the practice to be for the purpose of promoting the sale, use or supply of any goods or services. However, in the present case, the service charge is not meant to promote sale, use or supply of any service.

38.33. On the ground of the Respondent that GST is being levied on service charge, the same falls within the power of the GST department and GST authorities and the CCPA cannot interfere in this area.

Submissions on behalf of the Respondents:

39. On behalf of the Respondents Mr. Chetan Sharma – ld. ASG; ld. Counsels Mr. Sandeep Mahapatra and Mr, Kirtiman Singh addressed their submissions which are set out below:

39.1. NRAI and FHRAI have merely 1116 and 3000 members respectively whereas tall claims are made in the petition that there are lakhs and lakhs of members. This is a completely incorrect statement.

39.2. There is no restriction or mandate imposed by the authority which restricts the flexibility of establishments to price food products in the manner as they choose. Adequate freedom exists for the establishments to price the food products and other items.

39.3. The freedom guaranteed to the Petitioners under Article 19 of the Constitution of India is not impinged upon. The fundamental argument is that after fixation of the prices of food items, over and above the price of the food products, the consumer cannot be mandatorily asked to pay a service charge.

39.4. Power to 'Levy' is a sovereign function, which the establishments cannot usurp to themselves. There is a clear attempt by the establishments to superimpose upon the consumer, over and above the price of the food items, a charge that is being presented as though it were being charged by the Government. Reliance is placed upon ***Assistant Collector of Central Excise v. National Tobacco Co. (MANU/SC/0377/1972)*** to argue that the word levy or levying of any tax charge is a sovereign function.

39.5. Paragraph 12 of the writ petition being ***W.P. (C) 10867/2022*** is highlighted to argue that in the said petition, it is the stand of the Petitioner that the service charge is not a tip and the consumer is required to pay the same whereas in the representations made to the Government, the exact opposite was stated by the association itself. Reference is made to the representation dated 2nd June, 2022 where service charge is acknowledged to be colloquially known as the *`Tip'*.

39.6. The representation dated 24th June, 2022 is relied upon, where service charge is clearly mentioned to be a *Tip* or a *Gratuity*.

39.7. On a query from the Court as to what is the source of power of the authority for issuing guidelines, reliance is placed upon Section 18(2)(l) of the CPA, 2019 to submit that apart from the specifically mentioned powers of the authority, the authority also has the power to issue guidelines to prevent unfair trade practice and to protect consumer interest.

39.8. Power of the CCPA can also be read into Section 10 of the CPA, 2019 which clearly sets out four categories of matters which can be regulated by the authority:

- Violation of rights of consumers,
- Unfair trade practices,
- False or misleading advertisements which are prejudicial to the consumer interest,
- To protect, promote and enforce the rights of consumers.

39.9. The mandate of the CCPA under Section 10 of the CPA, 2019 being so broad, any complaint received from the consumer can be looked into by the authority and steps can be taken under Section 18 of the CPA, 2019. The emphasis is, therefore, on the fact that Section 10 of the CPA, 2019 provides the mandate and Section 18 of the act permits the authority to issue guidelines.

39.10. Hundreds of complaints were received against service charges being levied in the restaurant establishments and the same being collected by the said establishments, the authority could not have just been a mute spectator.

39.11. There is a long background which led to the issuance of these guidelines. Firstly, a letter was sent by the Ministry of Consumer

Affairs on 14th October, 2015 to the Hotel Association of India in respect of collection of service charges. In response to the said letter, on 28th October, 2015, the said association took a position that levying of service charge is a globally accepted practice. However, the Hotel Association of India also clearly informed the Ministry that if a consumer is dissatisfied with the experience the service charge can even be waived of. The same is extracted for reference:

> *"It is also pertinent to note that* ***service charge is completely discretionary. Should a customer be dissatisfied with the dining experience he can/she can have it waived off.*** *Therefore, it is deemed to be accepted voluntarily less than one percent of customers ask for a waiver, further substantiating their acceptance of this practice."*

39.12. The Ministry of Consumer Affairs upon receiving this clarification from the Hotel Association of India wrote to the Food and Civil Supplies Ministry of all State and Union Territories placing the stand of the association on record. The letter further contained a direction to disseminate this position to all the restaurant establishments with a direction that the fact that service charge is voluntary and discretionary for the consumers should be displayed in all the restaurant establishments. Despite this particular communication having been issued, it was realised that the restaurant establishments were charging service charges almost in a mandatory manner. This led to the guidelines dated 21st April, 2017 being issued by the Ministry of Consumer Affairs clearly clarifying that the price of goods ought to cover both the goods and the services and a tip or gratuity is in the discretion of the customer. The said guidelines also prescribe that

making a customer leave the premises or subjecting the entry of a customer to the condition of paying service charge would also constitute a restrictive trade practice.

39.13. On 9th March, 2021, after the issuance of these guidelines, again a press release was issued in response to various consumer complaints received across the country. The release clarified that the service charge is optional and that its payment is at the consumer's discretion.

39.14. The guidelines dated 21st April, 2017 required the establishment to give a bill whenever payment is received. It also required the establishment to put up a board. The service charge column ought to be left blank and discretion should be to the customer. The rights of customers to be heard and redressed was also reserved. The said guidelines which were issued under the Consumer Protection Act of 1986 has stood the test of time and have never been challenged.

39.15. There were various sets of complaints which were received when the consumer helpline was started by the Government. The said complaints raised multiple issues:

- Service charge being made mandatory by the establishments.
- Service charge being touted as a charge being levied by the Government.
- Coercive measures undertaken by the establishments to force the consumers to pay service charge, even when they were dissatisfied with the service.
- Measures such as employment of bouncers etc., being used for collecting service charge.
- No consistency in the amount being charged as service charge. Some

establishments were charging 15%, some 12% and some 13%.

- Complaints as to terminology used for service charge was also not uniform and was creating confusion. In the bills the terms being used were VSC, SC, SER, etc.

39.16. In response to the large volume of complaints which were received by the Ministry of Consumer Affairs, a press release was issued by the Ministry on 2nd June, 2022 raising consumers' grievances with respect to service charge and sought stakeholder consultation. In response to this press release, one of the associations namely Mumbai Grahak Panchayat also wrote to the Ministry stating that the Government ought to declare collection of involuntary service charge as an unfair trade practice.

39.17. After the press release dated 2nd June, 2022 consultations were held with NRAI and FHRAI. It is after such consultation with consumer organizations and the establishments that the impugned guidelines dated 4th July, 2022 were issued. In order to ensure proper intimation and enforcement of the guidelines, communications were also issued to all the District Collector on 6th July, 2022 to conduct investigation and take action in terms of the Act and submit a report to the CCPA. Thus, the impugned guidelines were not in violation of the principles of natural justice inasmuch as the associations were duly heard.

39.18. The FHRAI simultaneously came up with clear press releases stating that the payment of service charges is voluntary, at the discretion of the customer. Extract from website of FHRAI dated 22nd May, 2022 and 2nd June, 2022 are relied upon. These press releases would show that the stand of the FHRAI is that service charge can be removed from the

bill and it is the complete discretion of the customer. Thus, the impugned guidelines are fully justified.

39.19 One of the Petitioners' arguments is that the Tourism Ministry has approved the mandatory collection of service charges. However, FHRAI's writ petition states that the Consumer Affairs Ministry wrote to the Tourism Ministry, and in response, the Tourism Ministry clarified that its guidelines do not mandate the collection of service charges.

39.20. Both the Petitioners have not filed any agreement on record which reflects that employees' associations or labor unions have confirmed service charges as part of an agreement with the employers.

39.21. Concerns are raised by the Union of India as to the manner in which the money which is collected as service charge is used by the establishment. Whether the same is even disbursed to the employees or not. If the service charge is being seen as beneficial provision under labour law, then some proof ought to have been adduced that the same is being paid to the labour and the employees.

39.22. There is no consistency between the NRAI and the FHRAI as to whether service charge is a tip or a gratuity. The consultation process which took place in May and June, 2022, FHRAI issued fresh releases contemporaneously to show that service charge is voluntary and not mandatory. It can therefore be waived off. It is because of this reason that the guidelines say that service charge is voluntary.

39.23. An attempt has been made to distinguish all the three judgments relied upon by the Petitioner. As far as ***Amazon v. Amway (supra)*** is concerned, reliance is placed upon the decision in ***Poonam Verma v.***

Delhi Development Authority [(2007) 13 SCC 154] wherein it is held that guidelines are not binding only if they lack the statutory backing. Here the guidelines are fully backed by Section 18 of the CPA, 2019.

39.24. Insofar as ***S.S. Ahuja v. Pizza Express (supra)*** is concerned, the MRTP proceeded on the basis that the tourism ministry had approved the service charge on the menu charge. However, the Ministry in the present case, has confirmed the opposite.

39.25. In ***Nitin Mittal v. Pind Balluchi Restaurant (supra)*** the issue of pricing arose in the context of differentiation between the dining charges and take-away charges and only in that context, the MRTP had held that service charge can be levied.

39.26. Insofar as the word 'levy' is concerned, it is argued that levy means an approval from the Government for a sovereign function. Reliance is placed upon the decision of ***Krishnakant Sakharam Ghag v. Union of India and Ors., W.P.(C) 4839/2003*** dated 3rd March, 2006 passed by the ld. Division Bench of the Bombay High Court.

39.27. The Respondents do not object to the price of goods being as per the discretion of the restaurant establishments but anything above the price of goods as service charge would not be permissible.

39.28. It is also highlighted that in at least three countries *i.e.*, Mexico, Switzerland and U.S., tip or gratuity is a voluntary service fee.

39.29. The consumer protection helpline receives a large quantum of complaints in respect of service charge and a chart in this regard has been placed before the Court to confirm that more than 10,491 complaints have been received on the national consumer helpline in respect of service charges. It is thus submitted that the guidelines ought

to be upheld and the writ petitions deserve to be dismissed.

39.30. It is further submitted by him that Section 10 and Section 18(2)(l) of the CPA, 2019 confers the power on the Authority to issue these guidelines. Thus, the said guidelines have been issued after a broad-based consultation with the stakeholders.

39.31. It is also further impressed upon the Court that service charge after being added to the regular bill amount is also a component over which GST is being charged. Therefore, in effect, the consumer is being forced to pay a substantially higher sum than just the charges for the food that has been consumed by the consumer in the establishment.

Analysis:

I. Evolution of Consumer Protection Law in India - Jurisdiction of the Central Consumer Protection Authority

40. *Caveat Emptor— 'let the buyer beware'* was historically, the principle of caution to buyers of goods. Subsequently, in the United States, the doctrine of *Caveat Venditor— 'let the seller beware'* developed which imposed greater obligations on sellers.[1]

41. In Common law jurisdictions, the mutual obligations of buyers and sellers were governed by laws relating to the sale of goods. Further, any dissatisfaction of the consumer in respect of a product or service could be adjudicated as a tortious claim.

42. However, the realities of the markets, the modes of conducting trade have all undergone enormous change in the last 40 to 50 years resulting in the statutory codification of consumer protection law. Laws were enacted across

[1] MacPherson v. Buick Motor Co., 217 N.Y. 382 (1916)

the globe, for protection of consumer rights.

43. In India, the first consumer protection legislation is the Consumer Protection Act of 1986 which was a law enacted for better protection of the interest of consumers. This was sought to be effected by establishment of consumer councils and dispute redressal forums at the District, State and Central level. The law of 1986 saw the rise in consciousness amongst consumers of their rights and there was a proliferation of consumer cases across the country over the next two decades.

44. The Act of 1986 was further amended in 2002 which made some changes in the pecuniary jurisdiction of consumer redressal forums and contemplated the creation of Benches for State and National consumer Commissions. In the amendment in 2002, one of the important additions was the inclusion of services and service providers into the ambit of the law. Over the next few years, consumer cases in respect of products as well as services saw a substantial increase.

45. The growth of the internet also changed the manner and mode of sale and purchase. E-commerce platforms came to be established and other methods of selling such as direct selling, telemarketing, multilevel marketing also became quite prevalent. In order to deal with the challenges that consumers were facing in the new marketplace which included brick and mortar shops, shopping arenas, wholesale malls, retail malls, e-commerce platforms, multilevel marketing and telemarketing platforms, etc., a need was felt for enacting a new law for protection of consumer rights.

The Consumer Protection Act, 2019

46. The CPA, 2019 was then enacted to address challenges of the new markets. The Statement of Objects and Reasons of the 2019 Act recognizes

the need for creation of an authority to protect consumer interest, in the following terms:

> *"4. The proposed Bill provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided."*

47. The CPA, 2019 is, thus, a statute which has been enacted for the purpose of protecting the interest of consumers in the modern world. Some of the provisions of CPA, 2019 insofar as they are relevant for the adjudication of the present two writ petitions are discussed hereinbelow:

i. Section 2(4) of the CPA, 2019 defines *'Central Authority'* as the Central Consumer Protection Authority established under Section 10 of the Act.

ii. Section 2(7) of the CPA, 2019 defines *'consumer'* as a person who either buys any goods for consideration or avails any service for a consideration.

iii. Section 2(9) of the CPA, 2019 defines *'consumer rights'* as rights of a consumer. This provision includes the right of a consumer to be informed about the price of goods so as to insulate the consumer against any unfair trade practice. Such rights also include the right

to consumer awareness. This provision is of utmost relevance for deciding the present issue and the same is extracted below for ready reference:

> *"Section 2(9) "consumer rights" includes,—*
>
> *xxx xxx xxx*
>
> *(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;*
>
> *xxx xxx xxx*
>
> *(iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;"*

iv. Under Section 2(19) of the CPA, 2019 the term *'establishment'* is defined. It includes any entity which carries on a business, trade, profession or any work incidental thereto.

v. Section 28 of the CPA, 2019 defines *misleading advertisement inter alia* as an advertisement which deliberately conceals important information.

vi. Section 2(38) of the CPA, 2019 defines *product service provider* as a person who provides any service in respect of a particular product.

vii. Under Section 2(42) of the CPA, 2019 the term 'service' is defined as a service of any description made available to potential users. Any service which is free of charge would not constitute service under this provision.

viii. Section 2(46) of the CPA, 2019 defines *unfair contract* as one which has terms causing significant change in the rights of consumers including imposing any unreasonable charge, obligation or condition which puts a consumer to disadvantage.

ix. Section 2(47) of the CPA, 2019 defines *'unfair trade practice'* as a trade practice which, insofar as it is relevant in the present case, would mean a trade practice which is given below:

(i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(h) makes to the public a representation in a form that purports to be—

(A) a warranty or guarantee of a product or of any goods or services; or

(B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no

reasonable prospect that such warranty, guarantee or promise will be carried out;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of this sub-clause, a statement that is,—

(A) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained.

Central Consumer Protection Authority

48. One of the most important features of the CPA, 2019 is the establishment of the CCPA, which is a regulator for protection and enforcement of the rights of consumers. The CCPA is established under Section 10 of the CPA, 2019 as a regulator to regulate matters relating to violation of the rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interest of the public and consumers. The CCPA is also established to promote, protect and enforce

the rights of consumers as a class.

49. The CCPA consists of a Chief Commissioner who manages the body along with other Commissioners. It consists of an investigation wing as provided under Section 15 of the CPA, 2019. The purpose of the investigation wing is, *inter alia*, to conduct an inquiry and investigation as may be directed by the CCPA. The CCPA under Section 16 of the CPA, 2019 can also make a complaint or refer a matter to the District Collector for enquiry or investigation regarding violation of rights of consumers as also into unfair trade practices, misleading advertisements, etc. The District Collector under Section 16 of the CPA, 2019 is to then submit a report to the CCPA in respect of the said complaint or reference.

50. Section 18 of the CPA, 2019 provides for the powers and functions of the CCPA. This is an important provision and is extracted below:

> *"**18. Powers and functions of Central Authority.***
> *(1) The Central Authority shall—*
> *(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;*
> *(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;*
> *(c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;*
> *(d) ensure that no person takes part in the publication of any advertisement which is false or misleading.*
> *(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid,—*
> *(a) inquire or cause an inquiry or investigation to be*

made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;

(b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;

(c) intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;

(d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;

(e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;

(f) undertake and promote research in the field of consumer rights;

(g) spread and promote awareness on consumer rights;

(h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;

(i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;

(j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;

(k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;

(l) ***issue necessary guidelines to prevent unfair trade practices and protect consumers' interest."***

51. Under Section 19 of the CPA, 2019, the CCPA is empowered to, either *suo moto* or upon complaints or directions from the Central Government, conduct a preliminary inquiry in respect of any violation under the Act and if a *prima facie* case is made out, it can direct investigation either by the Director General or by the District Collector. Further, the CCPA also has the power to refer the matter for investigation to other Regulators.

52. Section 20 of the CPA, 2019 gives teeth to the CCPA. It reinforces the CCPA's authority to enforce consumer protection laws under the Act. It *inter alia* provides that, if the CCPA is of the opinion that there is sufficient evidence to show violation of rights of consumers or that a person has indulged in an unfair trade practice, it may pass such order as may be necessary including those provided under the sub clauses (a), (b) and (c) of Section 20. Section 20 of the CPA, 2019 is extracted below:

> *"**20. Power of Central Authority to recall goods, etc.-** Where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including—*
> *(a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;*
> *(b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and*
> *(c) discontinuation of practices which are unfair and prejudicial to consumers' interest:*
> *Provided that the Central Authority shall give the person an opportunity of being heard before passing an order under this section."*

53. Section 21 of the CPA, 2019 outlines the powers of the CCPA to issue directions and penalties against false or misleading advertisements.

Section 22 of the CPA, 2019 outlines the power of search and seizure. Section 19(1) of the Act authorizes the CCPA to direct an investigation to be carried out either by the Director General or the District Collector. Under Section 22, the said officers or any other officer authorised on their behalf, can exercise the powers of search and seizure under Cr.P.C., 1973 for conducting an investigation. This provision further authorises the said officers to take into custody, any records, documents, articles, etc.

54. The CPA, 2019 recognizes class actions under Chapter 6 both in respect of product manufacturers, product service providers or even product sellers. Further, Section 88 of the act, provides that non-compliance of any direction of the CCPA under Sections 20 and 21 would be liable to be punished with imprisonment, which may extend to six months or even with fine. The said Section is reproduced below:

> *"**21. Power of Central Authority to issue directions and penalties against false or misleading advertisements.-** (1) Where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.*
> *(2) Notwithstanding the order passed under sub-section (1), if the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees: Provided that the Central Authority may, for every subsequent contravention by a manufacturer or*

endorser, impose a penalty, which may extend to fifty lakh rupees.

(3) Notwithstanding any order under sub-sections (1) and (2), where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year:

Provided that the Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.

(4) Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.

(5) No endorser shall be liable to a penalty under sub-sections (2) and (3) if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.

(6) No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business: Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

(7) While determining the penalty under this section, regard shall be had to the following, namely:—

(a) the population and the area impacted or affected by such offence;

(b) the frequency and duration of such offence;

(c) the vulnerability of the class of persons likely to be adversely affected by such offence; and

(d) the gross revenue from the sales effected by virtue of such offence.

(8) The Central Authority shall give the person an opportunity of being heard before an order under this section is passed."

Mandate of the Central Consumer Protection Authority

55. An analysis of the relevant provisions of the CPA, 2019 would show that the CCPA is the overall authority which has been vested with the power to take such measures as may be required to safeguard consumer interest. It can also prevent unfair trade practices by issuing guidelines under Section 18 (2) (l) of the CPA, 2019. The CCPA's role primarily, is to protect the rights and interests of the consumers. For this purpose, it has been vested with dual powers *i.e.* to take soft measures as also tough measures, if required.

56. The soft measures that the CCPA can implement are outlined under Section 18 of the CPA, 2019. The same are highlighted hereinbelow:

Soft Powers of the Central Consumer Protection Authority		
S. No.	**Relevant Provisions of CPA, 2019**	**Description**
1.	Section 18 (2) (d)	Power to review the matters relating to consumer rights. It includes research into consumer rights and safeguards that may be required.
2.	Section 18 (2) (e)	To recommend adoption of international covenants and best practices for enforcement of consumer rights.

3.	Section 18 (2) (g)	Spread and promote awareness on consumer rights.
4.	Section 18 (2) (h)	Encourage NGO and other institutions working in the relevant field to cooperate and work with consumer protection agencies
5.	Section 18 (2) (k)	Advice State and Central Governments, Ministries and other Departments on consumer welfare measures.
6.	Section 18 (2) (j)	Issue safety notices to alert consumers against any hazardous or unsafe goods/services.

57. The enforcement powers of the CCPA is displayed in the chart below:

Enforcement Powers of the Central Consumer Protection Authority		
S. No.	**Relevant Provisions of CPA, 2019**	**Description**
1.	Section 15	CCPA shall have a separate investigation wing for the purpose of conducting inquiry/investigation.
2.	Section 16	On a complaint or a reference made by the CCPA, the concerned District Collector may conduct an investigation

		on matters *inter alia* relating to violation of rights of consumers as a class and submit its report to the CCPA.
3.	Section 18 (2)(b)	CCPA has a right to file complaints before the District, State or National Commissions to protect the interest of consumers as a class.
4.	Section 18(2)(c)	The CCPA can even intervene in proceedings pending before District, State or National Commissions in respect of any allegation of violation of consumer rights or unfair trade practices.
5.	Section 18 (2)(l)	The CCPA may issue guidelines to prevent unfair trade practices.
6.	Section 19	The CCPA is empowered to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case of violation of consumer rights. Further, post the preliminary inquiry, if the CCPA is satisfied that there is violation of right of the consumers, it shall cause investigation to be made by the Director General or by the District Collector.
7.	Section 20	The CCPA, if satisfied on the basis of investigation that there is sufficient evidence to show

		violation of consumer rights, can pass an order *inter alia* directing recalling of goods, reimbursement of prices of goods and discontinuation of practices
8.	Section 88	Failure to comply with any direction of the CCPA passed under Section 20/21 shall warrant punishment with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 20 lakh, or with both.

58. The CCPA is also a body that can also refer matters to other regulators under Section 19 of the CPA, 2019, if necessary. This is particularly relevant when sectoral regulators need to be consulted in addressing consumer-related issues. For example, the Telecom Regulatory Authority of India *('TRAI')* in respect of telephone consumers.

59. Thus, the CCPA dons three hats –

- As a guardian of consumer rights;
- As an enforcer of consumers' rights;
- As an expert body to represent the voice of consumers before consumer commissions.

60. The vesting of the said three-pronged powers with the CCPA under Section 18 of the Act is an extremely crucial measure taken by the legislature to protect consumer interest and ensure their welfare.

61. The multiple roles assigned to the CCPA is complemented with the powers vested and recognized in it under Section 20 of the CPA, 2019 which

inter alia provides that when the CCPA finds any practice which is unfair or prejudicial to consumer interest, it can direct discontinuation of the said practice under law after affording a hearing. Any directions issued by the CCPA, if not complied with, could result in criminal prosecution under Section 88 of the CPA, 2019. This provision empowers the CCPA to impose penalties of imprisonment and fines as well.

62. The CCPA is, thus, not merely a recommendatory or advisory body. Under Section 18(2)(l) of the CPA, 2019, it has the power to issue guidelines and such guidelines ought to be for **preventing** unfair trade practices and for **protecting** consumers' interests. If such guidelines are not followed, the CCPA can direct an enquiry or an investigation by the concerned District Collector under Section 19 of the CPA, 2019 and after obtaining a report thereto it can issue notice to the concerned service provider and after hearing the service provider, it can even direct discontinuation of the said practice under Section 20 of the CPA, 2019. Failing to comply with the direction passed by the CCPA under Section 20 of the act, attracts punishment as outlined under Section 88 of the CPA, 2019.

63. The CCPA has to, however, before issuing guidelines under Section 19 of the Act, satisfy itself, that a practice is an unfair trade practice. After arriving at that satisfaction, in order to protect consumer interest, the CCPA is fully empowered to issue guidelines. Such guidelines have the complete statutory backing of the Act and can always be tested in a Court of law. It cannot, however, be argued that such guidelines would not be binding as the CCPA is fully empowered to ensure enforcement of its guidelines.

64. The following flow chart illustrates the powers of the CCPA relevant to the present case:

Mandate of the Central Consumer Protection Authority
Ascertain whether a trade practice is an *'unfair trade practice'* within the contours of Section 2(47) of the CPA, 2019 ↓
Issuing necessary guidelines under Section 18(2) (l) of the CPA, 2019 to prevent such unfair trade practices. ↓
Refer the matter for investigation by the Director General/District Collector or any Regulator under Section 19 of the CPA, 2019 ↓
On the basis of investigation, if the CCPA is satisfied that there is a violation of consumer right, it can pass directions under Section 20 of the CPA, 2019 ↓
Non-compliance of directions passed by the CCPA under Section 20 of the CPA, 2019-warrants a punishment as specified under Section 88 of the CPA, 2019

65. On the non-binding nature of Guidelines, Petitioners have placed reliance on the decision in ***Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. & Ors. (supra)***. In the said case, the Delhi High Court was considering the validity of Direct Selling Guidelines *('DSG')*. The ld. Division Bench *inter alia* held that that the guidelines therein, which were governing the trade of direct selling entities were merely advisory in nature and were prepared by the interministerial committee of the Government of India with representatives from various Ministries. The notification of the guidelines merely nudged and advised State Governments and Union

Territories to take actions to implement the guidelines.

66. A perusal of the Direct Selling guidelines would show that the same were advisory and at the time when the Guidelines were framed, the CPA 2019 had not yet been notified and the source of power to frame the Rules, was not traceable. The Court therefore held that they did not acquire the character of binding Rules. This is clear from the following observations of the Court:

> *"84. In the present case, it is not the government, but private entities like Amway, Oriflame and Modicare, which are trying to seek enforcement of the DSGs. In fact, they are seeking to enforce guidelines against third parties and not against those who might be bound by the DSGs, as and when it becomes law. Merely because the DSGs are notified in the Gazette, they do not attain the status of ' law' within the meaning of Article 13 of the Constitution. The source of the power to frame such guidelines is traceable only to the CPA. With the CPA, 2019 itself not having been notified, these draft guidelines could not have attained the character of 'binding Rules' under the CPA, 2019, or for that matter, even under the CPA, 1986. When clearly even the draft guidelines mentioned the Act to be the CPA, there was no occasion for the learned Single Judge to accept the plea that they could be sourced to Articles 73 or 77 of the Constitution of India. Therefore, there was no occasion to apply the decision in Ram Jawaya Kapoor (supra)."*

However, in the present case, the impugned guidelines have been issued by the authority which is empowered in law *i.e.,* CCPA empowered under the CPA, 2019, to frame the guidelines and the power can be clearly traced back to Section 10 of the CPA 2019.

67. In ***Poonam Verma v. Delhi Development Authority (supra)*** it was held that guidelines which do not have statutory backing, remain advisory. However, in the present case the guidelines do have proper statutory backing. The CCPA, established under Section 10 of the CPA, 2019 has the mandate of law to pass the impugned guidelines in the interest of consumers as a class.

68. The decision in ***Maharashtra State Electricity Board v. Sheshrao [(1997) SCC OnLine NCDRC 14]*** is not relevant to the present decision. In the said case, it was *inter alia* held by the NCDRC that the cost or price charged for rendering of service would not be a matter falling within the purview of the Consumer Protection Act, 1986 and the same would not constitute a consumer dispute. The NCDRC further held that all that the consumer forums need to be concerned with, in such cases, is whether there has been any deficiency in the manner of rendering the service that has been contracted for.

69. This judgment was passed by the NCDRC in 1997, keeping in mind the principles enshrined in the Consumer Protection Act, 1986. The issues that arise in the present case are governed by the CPA, 2019 which provides for an authority *i.e.* the CCPA, to regulate consumer disputes. The CCPA has a broad mandate to exercise in the interest of consumers under the act. The present guidelines issued by the CCPA are passed keeping in mind its powers and functions provided under the CPA, 2019. Hence, the judgment of ***Maharashtra State Electricity Board v. Sheshrao (supra)*** does not apply to the present circumstances.

70. ***Gulf Co. Ltd. v. Union of India, [(2014) 10 SCC 673]*** the Supreme Court in this case while adjudicating the validity of guidelines issued in July 1983, for the development of beaches, *inter alia* held that the same do not

constitute law.

71. In the said decision the Supreme Court traced the reason for permitting construction, and held that the guidelines do not satisfy the essential and vital parameters and requirements of the law. The guidelines were in fact issued by the Ministry of Tourism, under Sections 3 & 5 of the Environment Protection Act, 1986 after recommendation by the Interministerial Committee.

72. It is noted that the guidelines in ***Gulf Co., (supra)*** are similar to the guidelines issued in the ***Amazon v. Amway (supra)*** case by the Interministerial Committee and not by any statutory authority. However, in the present case, as discussed above, the impugned guidelines have statutory backing under the CPA, 2019.

73. From the above discussion, it is clear that the impugned guidelines are issued by the CCPA under Section 18 (2) (l) of the CPA, 2019, which empowers it to 'issue guidelines'. The guidelines having been issued under powers vested under the Act, by the CCPA, the same would constitute valid law under Article 13 of the Constitution of India.

74. It is trite law that a regulation issued under a statute is valid law. The Supreme Court in the judgment ***Sukhdev Singh and Others v. Bhagatram Sardar Singh Raghuvanshi and Another [(1975) 1 SCC 421]*** while deciding on the validity of regulations framed under the Oil and Natural Gas Commission Act, 1959, the Life Insurance Corporation Act, 1956 and the Industrial Finance Corporation Act, 1948 held that the same have force of law. The Supreme Court while holding this, *inter alia* observed that the powers of statutory bodies are derived, controlled and restricted by the statutes which create them. Further, the *vires* of law is capable of being challenged if the issuing authority lacks statutory backing. However, if the same derives

authority from a statute or regulation, it is valid. The relevant portion of the judgment is extracted hereinunder:

> *"15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority**. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires**. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.*
> *16. In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts.*
> *17. **Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself.** Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. Re. Langlois and Biden [(1891) 1 QB 349] ; and Kruse v. Johnson [(1898) 2 QB 91] .*
> *18. **The authority of a statutory body or public administrative body or agency ordinarily includes the***

power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law*. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.*

19. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament and can be taken away by Parliament. The legislative function is the making of rules. Some Acts of Parliament decide particular issues and do not lay down general rules.

20. The justification for delegated legislation is three-fold. First, there is pressure on parliamentary time.

Second, the technicality of subject-matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs.

21. ***The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.***

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24. ***Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power.*** *Second, the executive power of a State is not authorised to frame rules under Article 162. This Court held that the Public Works Department Code was not a subordinate legislation (See G.J. Fernandez v. State of Mysore [AIR 1967 SC 1753 : (1967) 3 SCR 636]). The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the State and the government servants but also establish that there must be specific power to frame rules and regulations.*

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33. *There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would*

presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."

75. The impugned guidelines clearly recite the source of powers of the CCPA, as is required, and thus have the force of law in terms of the law discussed above. The nomenclature *`Guidelines'* does not take away the character of guidelines being statutory stipulations that are binding and enforceable. The power to issue Guidelines is in fact an essential function of the CCPA as per Section 19 of the Act.

II. **Balancing the autonomy of the Restaurant Establishments and Consumer Rights—Article 19(1)(g) of the Constitution of India**

76. It is the stand of the Petitioners that the impugned guidelines impinge and violate their rights as guaranteed under Article 19(1)(g) of the Constitution of India which recognises the right to practice any profession or to carry on any occupation, trade, or business without restriction from the State.

77. The settled position in law is that the Rights guaranteed under Article 19(1)(g) of the Constitution of India are subject to reasonable restrictions as provided in Article 19(6) of the Constitution of India. The Court in the present case, has to balance the rights of the restaurant establishments to conduct their business on the one hand and on the other hand, the rights of consumers, who also are entitled to know the price that is being charged. The larger interest of the consumer cannot be ignored or stifled in a manner contrary to law. The fundamental right to conduct business would permit the restaurant establishments to charge for the food being sold as also the services being provided. An establishment is free to price its products in the manner as it

pleases taking into account the raw-materials, salaries, expenditure, capital expenses on premises, man & machinery etc., However, once the pricing is done, to collect over and above the price, a prescribed rate of service charge – that too on a mandatory basis would not be justified. The right to carry on business cannot result in exaction of an amount which the consumer had neither bargained for nor agreed. Freedom under Article 19(1)(g) would be curtailed or hindered only if the establishment is barred from pricing its goods as it pleases – not if a step is taken in consumer interest.

78. In such cases, while considering the nature of right alleged to have been impinged upon, the Court has to *inter alia* bear in mind the test of reasonableness as provided in Article 19(6) of the Constitution of India as it is the primary duty of the State to cater to interest of society over individual interest. The same is captured best by the Latin legal maxim, *salus populi supremo lex*, which means, safety of the people is supreme law.

79. To determine the 'reasonableness' of a restriction imposed, the Court has to bear in mind several factors like, the nature of right alleged to be infringed, purpose of restriction, extent of restriction, etc. The same needs to be done on the touchstone of catering to the larger interest of society. This principle was upheld by the Supreme Court in ***Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others [(2016) 7 SCC 353]*** wherein while upholding *inter alia* the Rules enacted by the Madhya Pradesh Government to regulate admission of students, fixation of fees and the reservation in post graduate courses in the private professional educational institutions, the Court observed as under:

> *"**57.** It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to*

> *reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated."*

80. The benchmark to be adopted for striking a proper balance between the two facets *i.e.* the rights and limitations imposed thereon, is on the basis of the doctrine of proportionality. The concept of proportionality dictates that when a law limits a constitutional right, such a limitation is constitutional if it is proportional. What is treated as proportional is if it is meant to achieve a proper purpose and if the measures taken to achieve such a purpose are rationally connected to the purpose then, such measures are necessary. This principle has been best captured in the judgment passed by the Supreme Court in ***Modern Dental College (supra)*** in the following words:

> *"59. Undoubtedly, the right to establish and manage the educational institutions is a fundamental right recognised under Article 19(1)(g) of the Act. It also cannot be denied that this right is not "absolute" and is subject to limitations i.e. "reasonable restrictions" that can be imposed by law on the exercise of the rights that are conferred under clause (1) of Article 19. Those restrictions, however, have to be reasonable. Further,*

such restrictions should be "in the interest of general public", which conditions are stipulated in clause (6) of Article 19, as under:

> *"**19. (6)** Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to—*
>
> *(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*
>
> *(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."*

60. ***Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "doctrine of proportionality".*** *Jurisprudentially, "proportionality" can be defined as the set of rules determining the necessary and sufficient conditions for*

limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, Proportionality: Constitutional Rights and Their Limitation (Cambridge University Press 2012).], a limitation of a constitutional right will be constitutionally permissible if:

(i) it is designated for a proper purpose;

(ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;

(iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally

(iv) there needs to be a proper relation ("proportionality stricto sensu" or "balancing") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its protection prescribes the limitations on the exercises of the rights within its scope. In that sense, it defines the justification for limitations that can be imposed on such a right.

62. ***It is now almost accepted that there are no absolute constitutional rights [Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are:(a) Right to human dignity which is inviolable,(b) Right not to be subjected to torture or to***

inhuman or degrading treatment or punishment. Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished.

64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression "reasonable restriction" seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "reasonable" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see P.P. Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see Mohd. Hanif Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731 : 1959 SCR

629]). In M.R.F. Ltd. v. State of Kerala [M.R.F. Ltd. v. State of Kerala, (1998) 8 SCC 227 : 1999 SCC (L&S) 1] , this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

(1) The directive principles of State policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

81. Thus, restrictions are permissible and would be reasonable if they are within the overall interest of what the statute intends to achieve and the measure is proportional to the said purpose.

82. The Supreme Court in ***Karnataka Live Band Restaurants Association v. State of Karnataka and Others, [(2018) 4 SCC 372]*** upheld the constitutionality of '*The Licensing and Controlling of Places of Public*

Entertainment (Bangalore City) Order 2005' issued under the Karnataka Police Act, which meant to regulate and license, places of public entertainment like live band restaurants, discotheques, cabarets halls, etc. This was done while dismissing the appeal made by Karnataka Live Band Restaurants Association wherein it was *inter alia* held that the Court while deciding such cases, has to do the same on the touchstone of, whether the restrictions imposed are reasonable in the interest of general public or not. The term 'in the interest of general public' in clause (6) of Article 19 is of wide import and comprehends in it, public order, public health, public security, economic welfare of the community, etc. The relevant portion of the judgment is extracted below for a ready reference:

> *"38.* ***There are two Latin legal maxims, which need to be kept in mind while deciding the questions arising in this appeal. One is salus populi supremo lex which means the safety of the people is the supreme law and the other is salus reipublicae supremo lex which means safety of the State is the supreme law.***
>
> *39. In our considered view, it is the prime duty, rather statutory duty, of the police personnel/administration of every State to maintain and give precedence to the safety and the morality of the people and the State. Indeed, both are important and lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The Act and the 2005 Order are enacted keeping in view the safety and the morality of the people at large.*
>
> *40. In our view, whenever the impugned action is challenged on the touchstone of Articles 14 and 19(1)(g) of the Constitution, we have to keep in mind the well-settled principle of law laid down by this Court wherein this Court has examined lucidly and succinctly the scope and ambit of Articles 14 and 19(1)(g).*

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45. ***Similarly, so far as Article 19(1)(g) of the Constitution is concerned, this article accords fundamental rights to carry on any profession, occupation, trade or business. However, the right guaranteed under sub-clause (g) is made subject to imposition of appropriate reasonable restrictions by the State in the interest of general public under clause (6).***

46. ***As and when the question arises as to whether a particular restriction imposed by law under clause (6) of Article 19 is reasonable or not, such question is left for the court to decide. The test of reasonableness is required to be viewed in the context of the issues, which faced the impugned legislature. In construction of such laws and while judging their validity, the court has to approach the issue from the point of furthering the social interest, moral and material progress of the community as a whole****. Likewise, while examining such question, the Court cannot proceed on a general notion of what is reasonable in its abstract form nor can the court proceed to decide such question from the point of view of the person on whom such restriction is imposed. What is, therefore, required to be decided in such case is whether the restrictions imposed are reasonable in the interest of general public or not.*

47. This Court has laid down the test of reasonableness in State of Madras v. V.G. Row [State of Madras v. V.G. Row, (1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966] and very succinctly said that it is important, in this context, to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be

laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial mind.

48. ***This Court has further ruled that the expression "in the interest of general public" occurring in clause (6) of Article 19 is an expression of wide import which comprehends in it public order, public health, public security, morals, economic welfare of the community, and lastly, objects mentioned in Part IV of the Constitution.*** *(See Municipal Corpn., Ahmedabad v. Jan Mohammed Usmanbhai [Municipal Corpn., Ahmedabad v. Jan Mohammed Usmanbhai, (1986) 3 SCC 20] and Deepak Theatre v. State of Punjab [Deepak Theatre v. State of Punjab, 1992 Supp (1) SCC 684] .*

49. This Court has also ruled, as mentioned above, that the State has a right to regulate running of any business by putting reasonable restrictions under clause (6) of Article 19 in the interest of general public. It was held in Minerva Talkies v. State of Karnataka [Minerva Talkies v. State of Karnataka, 1988 Supp SCC 176] that the right to carry on the business of exhibiting cinematograph films, which is governed by the provisions of the Karnataka Cinemas Regulation Act and the Rules framed thereunder, is subjected to the rigour of reasonable restrictions and the State Government has a power to limit/restrict the exhibiting of the number of shows in the talkies in a day. It was held that such provisions are necessary to ensure public safety, health and other allied matters. It was held that imposing such restriction is essentially regulatory in nature and serves the purpose of the Act.

> *50. After taking note of the general principle of law governing the field, which we have to keep in mind, we have to examine the question as to whether the 2005 Order, impugned in the appeal, has created any discrimination or whether the 2005 Order is in any way unreasonable or arbitrary and lastly, whether it violates the appellant's fundamental right guaranteed under Article 19(1)(g).*
> *51. Having examined the questions in the light of the aforementioned general principles of law, we are of the considered opinion that the 2005 Order does not suffer from any legal infirmity and is therefore constitutional. This we say for more than one reason as detailed infra."*

83. Thus, the restriction imposed is to be examined on the touchstone of the public welfare, larger interest of society and economic welfare.

84. In the present case, the impugned guidelines *inter alia* restrict the right of the restaurant establishments to ***mandatorily*** collect service charge. Collection of voluntary service charge, for service rendered, is not barred. A law restricting the right of a citizen under Article 19(1)(g) of the Constitution of India has to cumulatively satisfy two distinct tests. First, it being in the interest of general public and second, it being a reasonable restriction. [2] The present guidelines satisfy the said tests as it is done in the interest of consumers as a class. The principle, benefit of larger interest of the society prevails over individual interest, fully applies to this case to reach the conclusion that the rights of consumers as a class would prevail over the right of restaurant establishments. The social and economic interest of the society as a whole is paramount.

[2] ***Cellular Operators Association of India and Others v. Telecom Regulatory Authority of India [(2016) 7 SCC 703].***

85. Further, applying the doctrine of proportionality to the present case, it is found that the limitation on rights of the restaurant establishments is constitutional as the same is proportional to the purpose sought to be achieved *i.e.,* the larger consumer interest. The impugned guidelines are a just means to achieve the said purpose and hence, cannot be held to be unconstitutional.

III. **Determining the nature of enforceability of service charge in restaurants and other establishments**

86. The stand taken by the restaurant establishments is that the levying of service charge is informed prior to the customer placing the order, by printing the same on the menu card itself. Hence, as per the Petitioners, once the customer is aware of the collection of service charge at an establishment and then continues to avail of the services, the customer is bound to pay the service charge. The collection of service charge is justified by establishments on several grounds – each of which is discussed below.

The levying of service charge is a contractual issue

87. It is the case of the Petitioners that levying of service charge is a contractual issue and not within the jurisdiction of the CCPA. The Petitioners have argued that after being aware of the fact that a restaurant establishment is going to collect service charge, if the customer still goes ahead and places the order, the customer and the restaurant establishment have entered into a contract and the same is binding in nature. This issue being a contractual issue is further not under the jurisdiction of the CCPA.

88. In these writ petitions, the clear stand of the Petitioners is that there are three eventualities that are possible in respect of service charge collection by

establishments:

(i) Where the establishments as a matter of policy, do not collect service charge;

(ii) Where the service charge is indicated on the menu card and the customer is then bound to mandatorily pay the same;

(iii) Where the service charge is not displayed on the menu but is sought to be charged.

89. The Petitioners clarify that the present writ petitions relate only to category (ii) *i.e.,* where the service charge is indicated on the menu card and the customer is then bound to mandatorily pay the same. It is acknowledged that there are several establishments which may not even be specifying the collection of service charge in the menu card. The Petitioners do not dispute that this would be unfair.

90. The question therefore that arises in this segment of the judgment is, can restaurant establishments levy and collect service charge mandatorily, by simply displaying the same on its menu card? Would this amount to unfair trade practice and would this be violative of rights of consumers?

91. In the opinion of this Court, the argument forwarded by the Petitioners *i.e.* the present being a contractual issue thereby barring the jurisdiction of the CCPA, is completely fallacious to say the least. The same does not take into consideration the conduct of a customer who after entering a restaurant establishment, focuses primarily on ordering the food. On most occasions, the customer may not have even noticed the display of collection of service charge which may be printed on the menu card. Moreover, the collection of service charge is nothing but a collection of payment of tips/gratuity, for

services which are rendered – but in a mandatory fashion, mostly without the knowledge of the customer. The collection of service charge over and above the price of the product consumed, is not merely a charge which is levied but is an extraordinary burden that is placed on the consumer that too on most occasions unknowingly.

92. The Court in order to analyse this issue, has to take into consideration the general conduct of customers who visit restaurant establishments. The customers who visit such establishments could be simply walk-in customers or even customers who make a conscious choice to visit an establishment. In either case, once the customer enters the establishment, it is unlikely that any customer would go away merely upon seeing the menu card. Once the customer has been handed the menu card, the focus is on ordering of the food. Most customers opt for the food joints of their choice based upon the approximate cost that they may incur, depending on the occasion – whether a celebration of a special occasion, a relaxing meal with friends or family, a formal meal with professional associates or colleagues etc., This assessment is based on the price printed on the menu card for the food. However, what invariably happens in most establishments is that after the food is charged, service charge of 10% - 12% is added by default and taxes are charged over and above the said amount. In effect therefore, the consumer ends up paying 10-12% more simply because of addition of the service charge. This can be illustratively demonstrated herein below:

Illustration—I: Sample Bill of High – end Restaurant Establishments

High-end Restaurant Establishments (Including Service Charge of 10%)	
Food Bill	Rs. 5000
Service Charge (10%)	Rs. 500
GST (18%)	Rs. 990
Total Amount	Rs. 6490
(Excluding Service Charge)	
Food Bill	Rs. 5000
GST (18%)	Rs. 900
Total Amount	Rs. 5,900

Illustration—II: Sample Bill of Middle level Restaurant Establishments

Middle level Restaurant Establishments (Including Service Charge of 10%)	
Food Bill	Rs. 1000
Service Charge (10%)	Rs. 100
GST (5%)	Rs. 55
Total Amount	Rs. 1,155
(Excluding Service Charge)	
Food Bill	Rs. 1000
GST (5%)	Rs. 50
Total Amount	Rs. 1,050

93. Thus, in the case of high-end restaurant establishments the impact could be as high as 12% to 15%. Similarly, in the case of middle level establishments the difference could be 10% - 12% which translates into a substantial sum for the consumer.

Service Charge—An Unfair Contract

94. The stand of the Petitioners is that so long as it is announced clearly on the menu card/display board that a service charge will be levied, the consumer, by choosing to consume food and enjoy the experience, implicitly agrees to it. Thus, an implicit contract exists between the establishment and the consumer, which cannot be overridden.

95. Collecting a mandatory service charge as a matter of default without giving a choice to the consumer, cannot be contended to be contractually binding in nature, inasmuch as any conditions which are unreasonable and impose undue burden on the consumers without their conscious choice would constitute *unfair contract* under Section 2 (46)(vi) of the CPA, 2019 as well. The same is extracted hereinunder for a ready reference:

> *"(46) "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:—*
>
> *(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or*
>
> *(ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or*
>
> *(iii) refusing to accept early repayment of debts on payment of applicable penalty; or*

> *(iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or*
> *(v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or*
> *(vi)* ***imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;*** *"*

96. A perusal of the definition provided in Section 2(46) of the CPA, 2019 shows that any practice which misleads the customer regarding price of the product, by imposing an unreasonable mandatory charge, would be an unfair contract. The restaurant establishments, by mandatorily collecting service charge, are in fact misleading the consumer about the actual price of products on the menu card. A consumer is conscious that apart from the amount mentioned on the menu card as the price of the product, the amount payable would only be such amount as is collected by the Government as a tax and nothing more. In fact, when a large number of food items are ordered, most consumers may not even notice the levy of the service charge that too in small print and may land up paying a much higher amount than what is chargeable. This constitutes unfair trade practice.

97. To substantiate their argument, the Petitioners further rely on the judgment ***Nitin Mittal v. Pind Balluchi Restaurant (supra).*** In this case, there was a difference in the prices of products listed in dining category and the take away category. The Bench of the NCDRC came to a conclusion that pricing of its products, is a discretion of the establishment and a contractual matter between the parties.

98. On a perusal of this judgment, it is observed that the focus of the

argument in this case, was of the difference in pricing between dining and takeaway and not the legality and validity of charging service charge itself. The relevant portion of the judgment is extracted hereinunder:

> *"3. 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. 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."*

Principle of Unconscionable Bargain

99. Freedom of contract, is a reasonable social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large. Freedom of contract is of little value when one party has no alternative between accepting a set of terms proposed by the other or doing without the goods or

services offered.[3]

100. The principle of unconscionable bargain was first judicially recognized in Indian jurisprudence in a seminal judgment of the Supreme Corut, being, ***Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156].*** In the said judgment, the Supreme Court adjudicated the validity of a contract between the employer and the employee wherein the terms of the contract therein *inter alia* provided that the employer can terminate the services of the permanent employees without assigning reasons on three months' notice or pay in lieu thereof on either side. The Supreme Court while holding the said terms in the contract to be void *inter alia* held that contracts entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest and the same shall be void. The relevant portion of the judgment is extracted hereinunder

> *"**88.** As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognised, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person"*

[3] Chitty on Contracts, 25th Edn., Vol. I, in para 4

exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages ... which are obviously disproportionate to the performance given in return". The position according to the French law is very much the same.

89. *Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of*

the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

90. *It is not as if our civil courts have no power under the existing law. Under Section 31(1) of the Specific Relief Act, 1963 (Act 47 of 1963), any person against whom an instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*

91. *Is a contract of the type mentioned above to be adjudged voidable or void? If it was induced by undue*

influence, then under Section 19-A of the Indian Contract Act, it would be voidable. It is, however, rarely that contracts of the types to which the principle formulated by us above applies are induced by undue influence as defined by Section 16(1) of the Indian Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other. In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of "undue influence" given in Section 16(1). Further, the majority of such contracts are in a standard or prescribed form or consist of a set of rules. They are not contracts between individuals containing terms meant for those individuals alone. ***Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest****. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and would also not be in the public interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void. While the law of contracts in England is mostly judge-made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872. In order that such a contract should be void, it must fall under one of the relevant sections of the Indian Contract Act. The only relevant*

> *provision in the Indian Contract Act which can apply is Section 23 when it states that "The consideration or object of an agreement is lawful, unless ... the court regards it as ... opposed to public policy."*

101. In the present case, even if an implied contract is deemed to exist between the consumer and the restaurant establishment, upon the consumer placing an order after being informed about the service charge, it would be rendered void. This is because consumers, at this scale, have little bargaining power against restaurant establishments as a class. The Court is of the opinon that the said class requires to be protected with the intent to secure social and economic justice. Such a view is also in consonance with Article 14 of the Constitution of India. Thus, an implied contract on the basis of so-called information cannot constitute a validly enforceable contract as the same would be an *unfair contract* as per the Act itself.

102. The Petitioners argue that the manner in which the sellers work out the price of their product is their own choice and not subject to control. To substantiate this argument, the Petitioners rely on the judgment ***Prem ji Bhai Parmar and Ors. Vs. DDA and Ors. [(1980) 2 SCC 129]***

103. On a perusal of the judgment, it is observed that the Supreme Court *inter alia* held that how the seller works out his price is a matter of his own choice, however, the same is subject to statutory control. The relevant portion of the said judgment is set out below:

> *"8. "....**How the seller works out his price is a matter of his own choice unless it is subject to statutory control**. Price of property is in the realm of contract between a seller and buyer. There is no obligation on the purchaser to purchase the flat at the price offered. Even after registration the registered applicants may opt for other schemes. His right to enter into other*

> *scheme opting out of present offer is not thereby jeopardised or negatived and applicants so outnumbered the available flats that lots had to be drawn. With this background the petitioners now contend that the Authority has collected surcharge as component of price which the Authority was not authorised or entitled to collect. Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Article 32."*

104. The above decision makes it clear that the sellers' choice and freedom to price his products, can be regulated if there is any statutory provision which negates the same. In the present case, the CCPA issued guidelines *inter alia*, negating the practice of restaurant establishments to collect mandatory service charge. The impugned guidelines have the mandate of the CPA, 2019 and thus, the present case is not covered by the decision in ***Prem ji Bhai Parmar and Ors. Vs. DDA (supra).***

Contract to be vitiated if contrary to public interest:

105. It is trite law that contracts which are against public interest or public welfare are contrary to public policy and the same are therefore, unlawful and void. This principle has been recognised by the Supreme Court in ***Rattan Chand Hira Chand v. Askar Nawaz Jung and others [(1991) 3 SCC 67]*** wherein it was *inter alia* observed that contracts which have a tendency to injure public interest are against public policy and the determination as to what contracts would constitute injury to public interest would be different from case to case and the same needs to be considered by the Court. The relevant portion of the judgment is extracted hereinunder:

> *"**17. I am in respectful agreement with the conclusion arrived at by the High Court. It cannot be disputed that***

a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. ***The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immutable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna.*** *When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.*

18. *It is true that as observed by Burrough, J. in Richardson v. Mellish [(1824) 2 Bing 229, 252 : 130 ER 294] public policy is "an unruly horse and dangerous to ride" and as observed by Cave, J. in Re Mirams [(1891) 1 QB 594, 595 : 7 TLR 309] , it is "a branch of the law, however, which certainly should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy". But as observed by Prof. Winfield*

in his article "Public Policy in the English Common Law" [(1928) 42 Harv L Rev 76, 91] :

> *"Some judges appear to have thought it [the unruly horse of public policy] more like a tiger, and refused to mount it at all, perhaps because they feared the fate of the young lady of Riga. Others have regarded it like Balaam's ass which would carry its rider nowhere. But none, at any rate at the present day, has looked upon it as a Pegasus that might soar beyond the momentary needs of the community."*

All courts have at one time or the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances shirk from their duty and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing values, and do what is expected of them. The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the societal goals and endanger the public good.

23. *In the face of the concurrent findings with which we agree, I have no doubt in my mind that the contract relating to the payment of the amount is not severable from the agreement to promote the cause of Sajjid Yar Jung by wielding the influence the plaintiff had. Every agreement of which the object or consideration is unlawful is void. The consideration or object of an agreement is unlawful when the court regards it as opposed to public policy. If anything is done against the public law or public policy that would be illegal inasmuch as the interest of the public would suffer in case a contract against public policy is permitted to stand. Public policy is a principle of judicial interpretation founded on the current needs of the community. The law relating to public policy cannot*

> *remain immutable. It must change with passage of time. A bargain whereby one party is to assist another in recovering property and is to share in the proceeds of the action and such assistance is by using the influence with the administration, irrespective of the fact that the persons intended to be influenced are not amenable to such influence is against protection and promotion of public welfare. It is opposed to public policy. In this view, we would hold that the plaintiff cannot enforce the agreement to recover the amount from the respondents."*

106. In the present case, mandatory levy of service charge by the restaurant establishments is against public interest and undermines the economic as well as social fabric of consumers as a class. It imposes an additional financial burden on the customers and distorts the principle of fair trade as the customer is mandatorily asked to pay the same, regardless of the consumer's satisfaction for the said service. Furthermore, such charge creates an unfair pricing structure which lacks transparency and therefore is contrary to public interest. Hence, the stand of the Petitioners that an implied contract is entered into by a customer and the restaurant establishment, does not stand and is legally untenable.

107. The Petitioners try to justify the mandatory additional charge on service by relying on the judgment ***Archana M Kamat v. Canara Bank and Anr. [(2003) 4 SCC 683].*** In the said case, before the Supreme Court, the charging of an extra amount for issuing leaves of Magnetic Ink Character Recognition *('MICR')* cheques was challenged. The grievance of the Appellant was that the concerned bank did not charge the said amount earlier, however, the same was suddenly introduced as a unilateral action of the bank without informing the Appellant customer.

108. In this case, while recognizing business exigencies which require such charges to be levied, the Supreme Court recognized as under:

> *"6. The appellant before us, namely, the customer, has urged that the National Commission is not right in holding that it relates to pricing of services rendered by the Bank. The arguments advanced before the District Forum and the State Commission have been reiterated before us. Much stress has been placed on the point that the charge has been unilateral, without consent and against the directives of RBI. We are not impressed by the submission made on behalf of the appellant. The fact which cannot escape notice is that recently there has been a large-scale change and improvement in the working and method and manner of functioning of various institutions, including banks. Very many services, which were not available earlier, have been introduced with the aid of mechanical and technological devices. Introduction of computerisation has its own effect, one of which is introduction of MICR cheques. There is no denying of the fact, from either side, that it facilitates the clearance of the cheques and avoids an unduly long time-consuming process in cheque clearance, which are issued by the customers within the city or in any other part of the country. Therefore, to say that it was only for the facility of the Bank itself that MICR cheques were introduced, would not be correct nor the argument that it could not be permissible for the Bank to make up some amount of the cost incurred in introducing the new and modern infrastructure for improving its working. We also feel that for such small charges necessitated due to general modernisation of its functioning and services, the question of it being unilateral, does not arise nor the question of consent of each customer.*"

109. The facts of this case are materially different from the present one. In the said case, the need for MICR cheques was recognized and a minimal amount of Rs. 50 for 50 MICR cheques was charged by the bank. Further, the same was necessitated due to modernization and for better facilitation of services rendered by the bank. Moreover, the introduction of MICR cheques, as recognized in the judgment itself, was in the interest of customers only as it substantially reduced the time taken for processing cheque clearance. The present case differentiates itself from the facts of the said case. In the present case, substantial amount of charge is collected by the restaurant establishments, contrary to the interest of consumers as a class.

IV. The Misleading Nomenclature of Service Charge Collected by the Restaurant Establishments

110. As per the counter affidavit, on the portal of the Department of Consumer Affairs, a large number of complaints were received from consumers regarding forcible collection of service charge.

111. The issue of mandatory levying of service charge by the restaurant establishments has been in contention for several years as the record shows. In a letter dated 14th December, 2016, the Ministry of Consumer Affairs had clearly informed the Secretary, Food, Civil Supplies and Consumer Protection of all State/UT Governments that several complaints were being received on the consumer helpline numbers wherein consumers were raising grievances about service charge being levied by the establishments in the range of 5% to 20% in lieu of tip. Consumers had also complained that service tax was being charged on the service charge. At that time, the Hotel Association of India *('HAI')* had clearly written to the Ministry of Consumer Affairs, Food and

Public Distribution that service charge is discretionary and can be waived of. The extract from the said letter of the HAI dated 28th October, 2015 is set out below:

> *"**It is also pertinent to note that service charge is completely discretionary. Should a customer be dissatisfied with the dining experience he can/she can have it waived off. Therefore it is deemed to be accepted voluntarily**. Less than one percent of customers ask for a waiver, further substantiating their acceptance of this practice.*
> *Hotels and restaurants are among the biggest employers of persons with less than secondary education, those socially and economically deprived and/or with disabilities. The earnings from service charge go a long way in improving their earnings, which would otherwise be much less. The industry is a very large vocational skills trainer and trains lakhs of unskilled youth yearly. Service charges and fair wages enable the industry to recruit the otherwise opportunity deprived and raise their social standing.*
> *We urge the Department of Consumer Affairs, GOI to allow industry to continue this standard global, especially considering the precedence of the case in the Punjab & Haryana High Court. ·*

112. In view of the stand of the HAI, the Ministry of Consumer Affairs on 14th December, 2016 had directed as under:

> *"3. The Hotel Association of India. Bhikaji Cama Place, New Delhi, on the matter being taken up with them, observed that the service charge is completely discretionary Should a customer be dissatisfied with the dining experience he/she can have it waived off. Therefore, it is deemed to be accepted voluntarily.*
> *4. In the circumstances, it is requested that the State Government may sensitize the companies, hotels and restaurants in the state regarding aforementioned*

provisions of the Consumer Protection Act. 1986. Information may also be disseminated through display at the appropriate place in the hotel/restaurants that the 'service charges" are discretionary/ voluntarily and a consumer dissatisfied with the services can have it waived off."

113. At the relevant point in time, a press release was also issued by the Ministry of Consumer Affairs on 2nd January, 2017 stating that payment of service charge was discretionary. The problem, however, of collection of service charge continued to persist which had then led to the issuance of guidelines dated 21st April, 2017. In the said guidelines, the Ministry again directed as under:

"(1) A component of service is inherent in provision of food and beverages ordered by a customer. Pricing of the product therefore is expected to cover both the goods and service components.
(2) Placing of an order by a customer amounts to his/her agreement to pay the prices displayed on the menu card along with the applicable taxes. Charging for anything other than the afore-mentioned, without express consent of the customer, would amount to unfair trade practice as defined under the Act.
(3) Tip or gratuity paid by a customer is towards hospitality received by him/her, beyond the basic minimum service already contracted between him/her and the hotel management. It is a separate transaction between the customer and the staff of the hotel or restaurant, which is entered into, at the customer's discretion.
(4) The point of time when a customer decides to give a tip/gratuity is not when he/she enters the hotel/restaurant and also not when he/she places his/her order. It is only after completing the meal that the customer is in a position to assess quality of service, and decide whether or not to pay a tip/gratuity and if so, how

> *much. Therefore, if a hotel/restaurant considers that entry of a customer to a hotel/restaurant amounts to his/her implied consent to pay a fixed amount of service charge, it is not correct. Further, any restriction of entry based on this amounts to a trade practice. which imposes an unjustified cost on the customer by way of forcing him/her to pay service charge as condition precedent to placing order of food and beverages, and as such it falls under restrictive trade practice as defined under section 2(1)(nnn) of the Act.*
> *(5) In view of the above, the bill presented to the customer may clearly display that service charge is voluntary, and the service charge column of the bill may be left blank for the customer to fill up before making payment.*
> *(6) A customer is entitled to exercise his/her rights as a consumer, to be heard and redressed under provisions of the Act in case of unfair/restrictive trade practices, and can approach a Consumer Disputes Redressal Commission/Forum of appropriate jurisdiction."*

114. As per the above guidelines, any bill issued by a restaurant establishment, would have a separate column displaying service charge, the same would be left blank, to be filled by the customer after availing of the service. Despite these guidelines, establishments continued to charge mandatory service charge.

115. As per the counter affidavit, on the portal of the Department of Consumer Affairs, a large number of complaints were received from consumers. The grievances raised by consumers were to the following effect:

i) Consumers who were dissatisfied with the service of an establishment sought reduction of the service charge or its waiver. However, the customers were told that the service charge is mandatory, even if the customer was dissatisfied with the service.

ii) Some customers confused service charge and GST levied by the Government. Moreover, there were instances where the owners of restaurant establishments had stated that service charge is a government rule.[4]

iii) There were also instances where service charge was forced to be paid by the customer using brute force, threats, etc. In some cases, the service charge was levied and upon the customers refusing to pay the same, bouncers were called and threats were issued to pay the entire bill are common[5]

iv) Complaints of some restaurant establishments putting wrong GST numbers in the bill to avoid being traced[6] were also made.

v) Consumers were also found to be told that service charge does not depend upon the quality of service provided and it is a mandatory payment. Further, staff behaved rudely with the customer for payment and bouncers were called to ensure that the bill is paid.[7]

vi) Some consumers complained that service charge of 13% is being collected over and above the GST. [8]

vii) There are also examples of bills not giving the full expansion of the word 'Service Charge' and use the abbreviation such as 'VSC' for voluntary service charge, 'SC' for service charge, 'SER', 'CHGS', 'S. CHARGE', 'SRVCGH', etc. [9] The impact of this is that the

[4] Boho Restaurant, Bangalore
[5] Tipsy Bull Koramangala, Bangalore; Out of the box Courtyard, Delhi; Air Live, Road No. 36, Hyderabad
[6] Mansion Hotel, Sahara Star, Mumbai
[7] PUBLIQ, Pimpri-Chinchwad, Maharashtra
[8] Amritsari Zaika, Pune, Maharashtra
[9] United Coffee House, CP, Delhi; Aromas Cafe, Viviana Mall, Mumbai; Beer Cafe, Ambience Mall, Gurgaon.

consumers presume that this charge is levied by the government.

viii) The bills are also generated on dot matrix printers and the print out of the bill is barely readable.

Measures taken by the Department of Consumer Affairs

116. In view of the various complaints that were received, a press release was issued by the Ministry of Consumer Affairs on 23rd May, 2022 to the following effect:

> *"The Department of Consumer Affairs (DoCA) has scheduled a meeting on 2nd June, 2022 with the National Restaurant Association of India to discuss the issues pertaining to Service Charge levied by restaurants. The meeting follows as a result of DoCA taking notice of a number of media reports as well as grievances registered by consumers on the National Consumer Helpline (NCH). In a letter written by Shri Rohit Kumar Singh, Secretary, Department of Consumer Affairs to President, National Restaurant Association of India, it has been pointed out that the restaurants and eateries are collecting service charge from consumers by default, even though collection of any such charge is Voluntary and at the discretion of consumers and not mandatory as per law.*
>
> *It has been pointed out in the letter that the consumers are forced to pay service charge, often fixed at arbitrarily high rates by restaurants. Consumers are also being falsely misled on the legality of such charges and harassed by restaurants on making a request to remove such charges from the bill amount. "Since this issue impacts consumers at large on a daily basis and has significant ramification on the rights of consumers, the department construed it necessary to examine it with closer scrutiny and detail", the letter further adds. The following issues pertaining to complaints by consumers would be discussed during the meeting.*

- *Restaurants making service charge compulsory*
- *Adding service charge in the bill in the guise of some other fee or charge.*
- *Suppressing from consumers that paying service charge is optional and voluntary Embarrassing consumers in case they resist from paying service charge*

  It is relevant to mention that the Department of Consumer Affairs has already published guidelines dated 21.04.2017 on charging of service charge by hotels/restaurants. The guidelines note that entry of a costumer in a restaurant cannot be itself be construed as a consent to pay service charge. Any restriction on entry on the consumer by way of forcing her/him to pay service charge as a condition percent to ……. An order amount to 'restrictive trade practice' under the Consumer Protection Act.

  The guidelines clearly mention that placing of an order by a customer amount to his/her agreement to pay the prices displayed on the menu card along with the applicable taxes. Charging for anything other than the afore-mentioned. Without express consent of the customer, would amount to unfair trade practice as defined under the Act.

  As per the guidelines, a customer is entitled to exercise his/her rights as a consumer to be heard and addressed under provisions of the Act in case of unfair/restrictive trade practices. Consumers can approach a Consumer Disputes Redressal Commission/Forum of appropriate jurisdiction"

117. As per this press release, a meeting was scheduled with the stakeholders on 2nd June, 2022 in respect to issues pertaining to service charge. Various consumers, consumer bodies and the Petitioner Associations had submitted their stand and finally, the impugned guidelines dated 4th July, 2022 were issued. In order to give teeth to the said guidelines, the Ministry also wrote to all the District Collectors to take necessary actions to ensure that the

guidelines are properly enforced.

118. The Ministry of Railways also issued a circular dated 15th July, 2022 revising the charges for onboard catering services. The said circular clarified that the same would not include service charge.

119. The stand of the Ministry of Consumer Affairs is that the guidelines issued by the Department of Consumer Affairs with respect to service charge found enormous support amongst consumers and an online poll which was run by the said Department on 'X' platform (formerly known as, *'Twitter')*. The same shows that that 88.5% of consumers did not wish to have a service charge by default on their bills. The same has been reflected below:

120. According to the Ministry of Consumer Affairs, various decisions have also been passed by Consumer Forums directing that service charge shall not be levied and forceful collection of the same is a violation of consumer rights. The details of the said orders are extracted hereinunder for a ready reference:

> *"**(i) Mr. Rajashekhar Kanaganti vs. AnTeRa Kitchen and Bar***
> *Case No. CC/610/2021*

District Commission, (Hyderabad-I) *decided on 26.04.2022*

> *"Thus in the present case, the Opposite Party deliberately failed and / or neglected to pay heed to the grievance of the complaint. When the complainant resisted the payment of service charge, the Opposite Party should not have forced him to pay the same. It is the discretion of the customer to pay the amount, if he likes the services. In the instant case, the complainant's evidence was unchallenged. · The Opposite Party has committed unfair trade practice against the complainant and there was deficiency of service by the Opposite Party. Hence, this point is answered in affirmative."*

The Commission directed the restaurant to refrain from levying service charges from the customers in the future and leave the option of paying or not paying open, refund the service charge amount of Rs. 164.95, pay a sum of Rs. 2000 towards mental agony and pay Rs. 1,000 for expenses of legal notice.

(ii) Arkadeep Sarkar vs. Yauatcha

Case No.CC/391/2019

District Commission, Kolkata (Central) *decided on 07.01.2022.*

> *"The OPs must have been aware of the guidelines of Fair Trade Practice related to changing of service charge from the consumers by hotels/restaurant issued by Department of Consumer Affairs, Government of India, inter alia, stipulating that service charge on hotel and restaurant bill is "totally voluntarily" and not mandatory. Photocopy of legal notice dated 29.05.2019 speaks that complainant requested the OPs to tender their apology in appropriate form and further asked to pay compensation to the tune of Rs. 25,000/- within 15 day from the date of receipt thereof. But such notice was unattended.*

Therefore, we are of the view that the conduct of the OP-1 is illegal malafide and contrary to the principles of law as stipulated under the Consumer Protection Act and the OP-1 deliberately failed and/ or neglected to ameliorate the grievance of the complainant."

The Commission directed the restaurant to refund the service charge amount of Rs. 308, pay a sum of Rs. 10,000 towards mental agony and pay Rs. 3,000 for expenses of litigation cost.

(iii) G. Thabre Alam vs. M/ s Buhari Hotel (Mount Road)

Case No. CC/240/2017

***District Commission, Chennai (South)** decided on 22.01.2019*

"The learned Counsel for the complainant brought to the notice of this Forum regarding the letter to the Secretary from the Government of India, Ministry of Consumer Affairs, Food & Public Distribution which reads as follows:

"In the hotels and restaurants are following the practice of charging 'Service charge' in the range of 5-20% in lieu of tips. A consumer is forced to pay this charge irrespective of the kind of service provided to him. The consumers are also required to pay service tax on this service charge so collected by the hotels and restaurants. The Hotel Association of India observed that the service charge is completely discretionary. Should a customer be dissatisfied with the dining experience he I she can have it waived off. Therefore, it is deemed to be accepted voluntarily. In the hotel/restaurants that the 'service charges' are discretionary / voluntarily and a consumer dissatisfied with the services can have it waived off proves that the service charge is voluntary not compulsory. Considering the facts and circumstances of the case this Forum is of the considered view that the opposite party is not entitled to collect service charge compulsorily."

The Commission directed the restaurant to refund the service charge amount of Rs. 9.90, pay a sum of Rs. 10,000 towards mental agony along with Rs. 5,000 as cost.

(iv) Smt. Manisha Banavalikar vs. Mini Punjab's Lakeside, Restaurant & Banquets
Case No. CC/151/2017
***District Commission, Mumbai Suburban**, decided on 10.12.2019*
(Decision in Marathi)
The Commission directed the restaurant to refund the service charge amount of Rs. 165, pay a sum of Rs. 5,000 towards Compensation along with Rs. 5,000 as cost.
*The decisions passed by Hon'ble Consumer Commissions in the above-mentioned cases are marked as **Annexure- R-20***"

121. However, even after the same, restaurant establishments continued to collect mandatory service charge. Taking cognisance of this, the CCPA on 4th July, 2022 issued guidelines to curb this practice undertaken by the restaurant establishments. It is these guidelines which are under challenge in these writ petitions.

122. In addition to the above, there are various other problems that this Court perceives in the collection of service charge:

i) The nomenclature itself i.e., service charge, especially after the introduction of service tax, is confusing, deceiving and misleading in nature;

ii) In the various bills of restaurant establishments placed on record, the charges are not comprehensible as different abbreviated versions such as 'VSC', 'SER', 'SER CHGS', 'S.CHARGE', 'SRVCGH', etc. are

being used which results in confusion to the customers that the same may be a charge levied by the Government.

iii) The said nomenclature is also not being made visible in the bills which are generated by the establishments;

iv) Moreover, when the bills of establishments are generated, it is noticed that the service charge is added right below the total amount of the cost of the food, followed by GST and taxes. For any consumer who does not examine the bill thoroughly, the impression given is that the service charge is a component of tax;

v) The service charge which ought to be in the form of a tip or a gratuity to the staff after enjoying satisfactory services, has now been adapted and converted into some sort of levy. Private establishments do not have the power to impose such levies or even collect such levies. A compulsory mandatory levy is a sovereign function.

123. In addition, the complaints sent by consumers, attached in the counter affidavit reveal that there is no uniformity in the percentage of service charge being collected. The manner of enforcement of payment of service charge is also coercive in nature. In some cases, service charge is being confused with service tax or a mandatory tax imposed by the government. In fact, for the consumers, the collection of service charge is proving to be a double whammy *i.e.,* they are forced to pay service tax and GST on the service charge as well. This position cannot be ignored by the Court.

124. The submission on behalf of the Petitioners that service charge is used in some way for benefit of staff, is a feeble argument to say the least. There is no evidence provided to show that the amount collected by way of service charge is in some way benefitting the staff. Even if it were so, it is only such

amount which is voluntarily paid by customers that can be utilised for the welfare of the staff. Mandatory collections which are detrimental to customers cannot be justified on the basis of some hidden benefit to staff of the establishments.

125. A compulsory mandatory levy is a sovereign function. The same has been held in a catena of judgments. The Respondents rely on the decision of ***Assistant Collector of Central Excise v. National Tobacco Co. (MANU/SC/0377/1972)*** to argue that the word levy or levying of any tax charge is a sovereign function.

126. Further, the Supreme Court in ***Patna Municipal Corporation & Ors. v. M/s Tribro Ad Bureau & Ors., [(2024) SCC OnLine SC 2874],*** *inter alia,* held that the royalty imposed by the Patna Municipal Corporation for putting hoardings/advertisements can't be termed as tax. The Supreme Court clarified that the power of charging a ***tax/levy*** has to be done in terms of the power conferred by law. The relevant portion of the judgment is extracted hereinunder:

> *"22. Having given our anxious thought to the issue at hand, the Court finds that the judgment impugned warrants interference. Though the Division Bench has elaborated on the law relating to imposition of tax/levy, we find that the issue was not examined in the manner required. The core question confronting us, as it was before the Division Bench, is whether the demand is by way of a tax/levy or simply in the nature of royalty for permission for advertising through hoardings within the limits of the Corporation.* ***The Court, at this juncture, would clarify that there can be no issue with the proposition of law as stands settled by the various earlier decisions of this Court with regard to the power and modality of charging of tax/levy, which obviously***

> ***<u>has to be done in terms of the power conferred under/by authority by law.</u>***"

127. Further, in the judgment, ***Noida Toll Bridge Company Ltd. v. Federation of Noida Residents Welfare Association and Others, [(2024) SCC OnLine SC 3831***, the Supreme Court re-emphasized that the power to '**levy'** a tax or fee cannot be inferred by implication but must be expressly conferred by a statute. The Supreme Court in this judgement expressly determined that no private entity can be granted the authority to levy taxes or fees, for such powers are exclusively vested in public authorities. The relevant portion of the judgment is extracted hereinunder:

> *"49.* ***<u>It is pertinent to underscore herein that taxing statutes, being penal in nature, must be construed strictly. The power to levy a tax or fee cannot be inferred by implication but must be expressly conferred by Statute. Under our Constitutional framework, no private entity can be granted the authority to levy taxes or fees, for such powers are exclusively vested in public authorities.</u>***
>
> *50. Nevertheless, the collection of fees or toll can be assigned to a developer or contractor for a defined period, including for the purpose of recovery of the investment made in developing the infrastructure. Thus, we concur with the High Court's conclusion that the Concession Agreement, in so far as it sub-delegates the power to levy and collect fees to NTBCL, is unlawful, and the Regulations justifying such sub-delegation undermine the objective of Section 6A of the 1976 Principal Act.*
>
> *51. Not only this, the Regulations came to be enacted only after the Concession Agreement had been executed, and were seemingly designed to validate the actions already taken by NTBCL and NOIDA. We may also hasten to add that the subject Regulations are neither retroactive nor can be applied retrospectively and are*

> *thus alien to the terms and conditions of the Concession Agreement.*
> *52. It seems that NTBCL and NOIDA have indulged in trickery and placed the cart before the horse, in attempting to authorise actions post facto, thereby obscuring the full extent of misuse of power. We find it evident that these Regulations were introduced by NOIDA in the aftermath of enacting the Concession Agreement, serving merely as an afterthought, while having no authority to do so.* ***We thus hold that NOIDA did not have any competence to delegate the power to levy fees and toll to NTBCL, and thereby overstepped its statutory bounds. Accordingly, we are not inclined to interfere with the findings of the High Court on this issue****."*

128. Thus, the nomenclature used by restaurant establishments to impose mandatory charges for the services they render *i.e.*, the term *'levy'* and *'service charge'* is not permissible in law as it is misleading and deceptive, apart from the mandatory collection of the charge itself being contrary to law.

129. The CCPA being an authority which is consciously established under Section 10 of the CPA, 2019 for the purpose of safeguarding consumer interest, could not have ignored such a large number of complaints coming from different quarters of the country and from across Courts in respect of service charge collection. The authority has rightly intervened in the matter and has passed the guidelines dated 4th July, 2022.

130. The collection of service charge has also proved to be a mode and method of increasing the revenues of establishments without increasing the cost of the food items. There can be no doubt that establishments are free to price their goods in the manner as they deem appropriate. However, a hidden cost such as service charge which cannot be deciphered from the menu card at the time of ordering the product, cannot be permitted. This is so because,

in effect, service charge is being mandatorily collected along with the price of the food items – on most occasions either unknowingly or forcibly.

131. The levy of service charge, is sought to be justified on the ground that the same is part of labour settlements and agreements with workers, etc. The Petitioners, to substantiate this argument have also relied on the judgment, ***Life Insurance Corporation of India and Ors. V. D.J. Bahadur and Ors. (supra)*** wherein it was held that settlements or awards with workers/ trade unions is binding.

132. There can be no doubt about the validity of the proposition that settlements with workmen are binding on establishments. Interestingly however, when the Court directed the Petitioners to produce any such agreements, except two agreements, nothing was produced by the Petitioners. Clearly, there was not enough evidence to substantiate this stand taken by the Petitioners. Moreover, any such settlement cannot override the law.

133. The submission that collection of service charge is part of agreements and settlements entered into with the work force and labour, is also bereft of any merit inasmuch as when the Court had directed the establishments to place on record any documents to support this argument, hardly anything was forthcoming. Moreover, settlements with labour and work force have to be on the basis of the revenues generated by the establishments and service charge cannot be justified on the ground that salaries or bonuses of staff have to be paid.

134. There can be a settlement between the restaurant establishments and work force as to the manner in which any voluntary tip or gratuity that is paid by the customer is divided so that it is not appropriated by any particular individual or class of waiters, bearers, etc., Such agreements are

understandable. However, any agreement that has the effect of impinging on the right of the consumer would be wholly untenable. The establishments are free to price their products in whatever manner they deem appropriate so long as the consumer is not being misled.

135. The CCPA is an authority which has been established by law under Section 10 of the CPA, 2019. Further, Section 18 of the said Act vests various powers and prescribes the functions of the CCPA. Under Section 18(2)(l) of the CPA, 2019 one of the CCPA's essential functioning is to issue guidelines. The manner of enforcement of guidelines are also provided in law. Thus, the guidelines have the required statutory mandate and statutory backing.

136. The CCPA while issuing the impugned guidelines has performed its functions within the four corners of the CPA, 2019 and not outside the same. The said guidelines though termed as guidelines are not optional guidelines but are mandatory guidelines which have to be followed. These guidelines emanate from the overarching authority vested in the CCPA, which is established under the CPA, 2019 for taking appropriate steps to defend rights of consumers and thus, it cannot be argued that the same are merely executive instructions which are not binding on establishments.

137. On the aspect as to whether a hearing was given to the restaurant establishments with respect to service charge, prior to issuing the impugned guidelines - clearly, the Ministry of Consumer Affairs has undertaken a stage-wise process of issuing these guidelines. The initial guidelines date back to 2017.

138. Thereafter, the present guidelines have been issued after proper stakeholder consultation. In the representation of the FHRAI dated 24th June, 2022 to the Ministry of Tourism and Culture, Ministry of Labour and

Employment as also to the Department for Promotion of Industry and Internal Trade, the stand taken by the FHRAI is that service charge is in the nature of a tip or gratuity and it is the prerogative of the customer whether to pay it or not. The relevant extract of the representation dated 24th June, 2022 is extracted hereinunder for a ready reference:

> *"In simple words, the Service Charge is an amount that is added to customer's bill in a restaurant to pay for the services of the persons who are involved in serving the food on the table. It is also colloquially known as "tip" or "gratuity". A Service Charge is a solicitation of a nominal additional charge for providing a delightful and memorable experience to the customers.*
>
> *xxx xxx xxx*
>
> ***However, Service Charge of a restaurant is a voluntary fee paid by the customer which is disclosed well in advance before placing an order**. Also, the same is clearly included as a separate heading in the bill as a "Charge", and not as a "Tax". Service Charge is neither a hidden charge nor a compulsory fee in any guise as the restaurants maintain utmost transparency with regard to the amount, the rate and the purpose of the charge. **It is shown separately in the final bill and payment of the same is up to the prerogative of customer / guest.**"*

As per FHRAI itself, the payment of service charge is the prerogative of the customer.

139. Thus, it is clearly represented by FHRAI that the establishments themselves did not deem payment of service charge as mandatory. They also took the position that the same would be in the form of a voluntary contribution. The initial letter from the HAI dated 28th October, 2015 was also to this effect that service charge is a voluntary payment which can be waived

by the restaurant establishments on request of the customer.

140. Despite issuing these letters to the Ministry of Consumer Affairs, Food and Public Distribution both the Associations which are before the Court have taken a contrary stance which would be impermissible. The establishments would be bound by the stand taken by them before the Ministry and they cannot be permitted to renege from the same.

141. The camouflaged and coercive manner in which service charge is being collected by the restaurant establishments itself shows the unlawful nature of the charge. This would clearly constitute an unfair trade practice under Section 2(47) of the CPA, 2019 as the collection of service charge materially misleads the consumer with respect to the price at which the food is being sold. On the basis of various consumer complains and bills of the restaurant establishments placed on record, the Court is convinced that service charge is being arbitrarily collected and coercively enforced.

142. In such a situation, the Court cannot be a mute spectator. Moreover, the regulator established under the CPA, 2019 *i.e.,* the CCPA has to step in and exercise powers vested in it under the Act. It has the complete mandate under the Act to curb unfair practices in the overall interest of the consumers.

143. In fact, as soon as the restaurant establishments mandate the customers to pay service charge, there is an automatic increase of at least 10% - 15% of the price of food items, which the consumer would not be aware while perusing the menu card. This is contrary to the basic principles of fairness as the consumer has an unbridled right to know the exact cost of the food items that are being purchased. This proposition was also upheld by the National Consumer Disputes Redressal Commission, New Delhi *('NCDRC')* in the judgment ***Big Bazaar (Future Retail Ltd.) v. Ashok Kumar and Ors.***

(MANU/CF/0536/2020) wherein the NCDRC discontinued unfair trade practice of arbitrarily imposing additional cost of carry bags at payment counter. The NCDRC in this judgment, *inter alia*, held that a consumer has the right to know, before he exercises his choice to make a selection for goods for purchase. Prior notice and information has to necessarily be there to enable the consumer to make his choice of whether or not to purchase a certain product. The relevant portion of the judgment is extracted hereinunder:

> *"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."*

144. The lack of clarity of the price of the product or the misleading nature of the price of the product by charging compulsory and mandatory service charge, results in an unfair trade practice under Section 2(47)(i) of the CPA, 2019. This provision is being misread by the Petitioners when the argument is made that it would only be an unfair trade practice if the said practice is for the purpose of promotion, sales, use or supply of goods. However, a perusal of the definition of unfair trade practice under the Act shows that a trade practice which is unfair for the *'provision of any service'* would also be an unfair or a defective trade practice. This part of the definition *i.e., "or for the*

provision of any service" is being ignored by the Petitioners.

145. The mere display of collection of service charge in a small display board or in hardly readable font on the menu or on the bill does not obviate the responsibility of the establishments to properly inform the consumer. The consumer's right to obtain information is absolutely paramount when it comes to such matters. Any argument that the same is a contractual agreement is also liable to be rejected as such conditions would constitute `unfair contract' under Section 2(46) of the CPA, 2019. Such contractual conditions would not be enforceable.

146. The Petitioners defend the practice of collecting service charge mandatorily by them on the basis of an argument that such charges are part and parcel of running a business and the same has been recognised in various judgments, including: -

- ***Management of Wenger and Co. v. Workmen. (supra)***
- ***The Rambagh Palace Hotel, Jaipur v. The Rajasthan Hotel Worker's Union Jaipur, (supra)***
- ***Commissioner of Income Tax v. ITC Ltd. (supra)***
- ***M/S Quality Inn Southern Star v. The Regional Director, Employees State, (supra)***
- ***ITC Limited Gurgaon v. Commissioner of I.T. (TDS) Delhi, (supra)***

147. The said judgments have been perused by the Court. In ***Management of Wenger and Co. v. Workmen. (supra)*** the Supreme Court was dealing with an award passed by the Tribunal relating to the wage structure of employees. The argument on behalf of the employees was that different establishments need to be treated differently. The Supreme Court held that since most of the establishments which were combined together by the Tribunal were carrying on the same business in about the same locality, a common award could be

passed. Moreover, the establishments had again argued that since waiters earn substantial amount of tips, the dearness allowance ought to be reduced. This argument was rejected by the Supreme Court. Insofar as service charge is concerned, the Supreme Court observed that the said issue was decided by the Tribunal which held that a share in the service charge need not be given for a period prior to the date of award. However, for future, the Tribunal had issued such a direction for sharing the service charge. This was set aside by the Supreme Court on the asking of the establishment.

148. This judgment in fact makes it clear that establishments have even questioned the right of employees for a share in the service charge and the impression sought to be given by the Petitioners that service charge is not meant purely for the sake of the employees, may not be wholly correct. However, in this decision the question as to whether the collection of mandatory service charge from consumers is valid or not did not arise.

149. In ***The Rambagh Palace Hotel, Jaipur v. The Rajasthan Hotel Workers' Union, Jaipur (supra)*** the question that arose for consideration was whether the workers are entitled to dearness allowance. The Industrial Tribunal had reduced the dearness allowance considerably. The argument of the hotel was that tips which were given to the staff which take the shape of half the salary are also distributed by management to the workers and thus, some adjustment needs to be given in that regard. The Court held that tips are not amounts paid by the management from its own pocket but merely a transfer of money which is collected by the establishment to the staff. The receipt of tips cannot reduce the award of dearness allowance and therefore, the Supreme Court did not interfere with the award of the Industrial Tribunal. This decision cannot in any manner be relied upon by the Petitioners to argue

that mandatory service charge has been legalized by the Supreme Court especially if the same is collected in a completely disapproved manner. The legality and validity of mandatory service charge being collected by establishments across the country was not an issue which was raised in this matter.

150. In ***The Commissioner of Income Tax v. ITC Ltd. (supra)*** the question which arose for adjudication was whether tips paid by customers for availing services in restaurants of Assessees constitute salary.

151. A Division Bench of this Court *inter alia* held that receipts of the tips constitute 'income' of the recipients and is chargeable under the head "Salary" under the Income Tax Act. Thus, it obligatory upon the assessees to deduct tax at source from such payments.

152. This case however was appealed before the Supreme Court by the Assessees in, ***ITC Limited Gurgaon v. Commissioner of I.T. (TDS) Delhi (MANU/SC/0449/2016)*** wherein it was *inter alia* held that tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not fall within the definition of salary under the Income Tax Act. The relevant portion of the judgment is extracted hereinunder for a ready reference:

> *"16.* ***On the facts of the present case, it is clear that there is no vested right in the employee to claim any amount of tip from his employer. Tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, therefore, fall within Section 15(b) at all****. Also, it is clear that salary must be paid or allowed to an employee in the previous year "by or on behalf of" an employer. Even assuming that the expression "allowed" is an expression of width, the salary must be paid by or on*

behalf of an employer. It must first be noticed that the expression "employer" is different from the expression "person". An "employer" is a person who employs another person under a contract of employment, express or implied, to perform work for the employer. Therefore, Section 15(b) necessarily has reference to the contract of employment between employer and employee, and salary paid or allowed must therefore have reference to such contract of employment. On the facts of the present case, it is clear that the amount of tip paid by the employer to the employees has no reference to the contract of employment at all. Tips are received by the employer in a fiduciary capacity as trustee for payments that are received from customers which they disburse to their employees for service rendered to the customer. There is, therefore, no reference to the contract of employment when these amounts are paid by the employer to the employee. Shri Kaul, however, argued that there is an indirect reference to the contract of employment inasmuch as but for such contract, tips to employees could not possibly have been paid at all. We are afraid that this argument must be rejected for the simple reason that the payments received by the employees have no reference whatsoever to the contract of employment and are received from the customer, the employer only being a conduit in a fiduciary capacity in between the two. Indeed, if Shri Kaul's arguments were to be accepted, even the position accepted by the revenue and consequently the High Court that tips given in cash, which admittedly are not covered by Section 192, would also then be covered inasmuch as such tips also would not have been given but for the contract of employment between employer and employee. Clearly, therefore, such argument does not avail Revenue."

The above judgement in fact recognises the fact that Tips are purely voluntary in nature.

153. In ***M/s Quality Inn Southern Star v. The Regional Director, Employees State, (supra),*** the Court clearly held that service charges could not be included in wages and hence no premium is payable on the said amount under the Employees' State Insurance Act, 1948. This case also does not go into legality and validity of collection of mandatory service charge.

154. ***S.S. Ahuja v. Pizza Express (supra)*** is relied upon by the Petitioners. This is a decision passed by a two member Bench of the Monopolies and Restrictive Trade Practices Commission, New Delhi *('MRTP')*. In this case, the complainant had alleged that the recovery of compulsory service charge at 9% of the total bill, made by the restaurant establishment was unjustified. The MRTP relied upon a stipulation and requirement of the Department of Tourism, Ministry of Tourism, Government of India to justify the establishment's practice of charging service provided, in the manner of a service charge. There were various personal services, etc., which were provided and thus, the MRTP observed that the Department of Tourism having approved the levy of service charge, the same could not be a restrictive or unfair trade practice. In the said judgment, the MRTP observed as under:

> *"8. We have carefully considered the submissions made on either side and have also gone through the material placed on record. As agreed to on both sides, the photostat copies of the menu cards of the restaurant placed on record by the respondent are not taken into consideration for want of originals.* ***Admittedly the restaurant in question has the approval of the Department of Tourism, Ministry of Tourism, Govt. of India and caters for special kind of food as is clear from its name as well the***

menu card. Levy of compulsory service charges also has the approval of the Department of Tourism, Ministry of Tourism, Govt. of India (Reference to regulatory conditions for approved restaurant as is evident from Annexure-I annexed with the* reply *of the respondent). *Levy of service charges on the other hand can not be questioned in law as there is no provision prohibiting levy of such charges. The respondent is also not alone in this kind of practice, there being others in the hospitality industry following the same. The menu card clearly mentions levy of extra service charges at 9% and the same is also displayed outside the restaurant providing information to the customer before hand as well before the order is placed for food/meal. A customer who can read the order for kind of dishes mentioned in the menu card as is the case, can very well read the conditions mentioned in the said card before placing the order for the food/meal. Non-reading of the same would necessarily be at his peril. It is difficult to comprehend that a customer choosing dishes amongst others as mentioned/offered in the menu card can mistake 'service charges' for sales tax as is the contention of the complainant. Non-disclosure of reasons for levying service charges, as is the practice in other similar restaurants/hotels, does not make the practice as unfair within the meaning of Section 36A of the Act. There is thus no unfair practice or deceptive method adopted by the respondent as contended by the complainant. In fact the extra levy at 9% would act as a disincentive to the promotion of sales, which is a pre-requisite condition for holding the trade practice to be unfair.*

9. ***It is true that, as generally understood and also impliedly accepted by the respondent, the tip is a voluntary contribution, which cannot be***

quantified. *To the extent the averments of the complainant are correct. In view of the stand taken by the respondent, however, not much weight can be attached to the statement of the waiter. Thus the complainant has not sufficiently demonstrated that the respondent has indulged in unfair trade practice.*

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.

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 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.*
>
> *The observations of the Commission made in the order passed under Section 12A of the Act were without considering the evidence on both sides rendered during the course of trial, as such, the same cannot be considered to be conclusive.*
>
> *In our considered view, the Notice of Enquiry is not maintainable and the same deserves and is directed to be discharged with no order as to the costs on the facts and in the circumstances of the case."*

155. In the present case, however, no such approval has been granted by the Ministry of Tourism towards collection of the service charge. Thus, while noting that the MRTP decision would not be binding of this Court, the above fact would be of significance and would change the basic foundation laid down in the judgment of ***S.S. Ahuja v. Pizza Express (supra)*** itself.

156. The Respondents rely upon ***Rajashekar v. AnTeRa Kitchen and Bar***

(Case No. CC/610/2021) wherein the complainant sought refund of the service charges collected from consumers. The establishment was charging 5% of the service charge on the bill amount, apart from Central GST and State GST. The Consumer Commission granted the refund after relying upon the 2017 guidelines issued by the Ministry.

157. Similarly, in ***Arkadeep Sarkar v. Yauatcha Kolkata, (Case No. CC/391/2019)*** the State Consumer Commission has observed that service charge is liable to be refunded and in fact compensation is also awarded for harassment to the complainant.

158. ***G. Thabre Alam v. M/s Buhari Hotel (Mount Road) District Commission, Chennai (South) (Case No. CC/240/2017)*** is similar to the case of ***Arkadeep Sarkar (supra).*** The service charge was directed to be refunded along with compensation.

159. It is, thus, seen that while the Petitioners have relied upon the decisions of consumer forums from a period, prior to the enactment of new law after the guidelines of 2017 various consumer forums as well have held that service charge is liable to be refunded. Thus, there has been a shift in consumer law jurisprudence even at the level of consumer commissions.

160. Moreover, all the decisions which are cited by the Petitioners are decisions under the Consumer Protection Act, 1986. The law has undergone substantial changes after the enactment of the CPA, 2019 where services have been included and the definition of unfair trade practice has also been expanded consequently.

161. In the opinion of this Court, every business has to be run in accordance with law. If any particular practice is unfair towards a consumer or a class of consumers, the same cannot be permitted.

162. The global nature of the practice of collecting service charge by restaurant establishments would not provide a defence to the Petitioners inasmuch as the practices in other countries cannot form the basis of quashing of Guidelines issued in India in accordance with law.

163. The Petitioners have also relied on the decision passed by the US Courts of Appeal, 11th circuit., ***Compere v. Nusret Miami, LLC [U.S. App. (11th Cir.]***. In the said case, the restaurant establishment therein had added 18% service charge which was to be mandatorily paid by customers. The facts in the said case were that the said amounts were collected for redistribution to employees on *pro rata* basis under the Fair Labor Standards Act.

164. The Court therein had analysed the manner in which the amount collected was being used and held that the service charge was considered as part of the employees' regular rate of pay. It was not a tip because Tips are solely determined by customers whether to pay or not. The Court primarily upheld the Department of Labor regulation which provided that a compulsory charge for service is not a tip.

165. It was only in those facts that the Court held that the 18% service charge was a *bona fide* service charge and not a tip because it was a compulsory charge of a service it was not determined solely by the customers. The establishment succeeded in view of the labour law regulations prevalent in the said jurisdiction.

166. The Court agrees with the Respondents that service charge being collected compulsorily or mandatorily by the restaurant establishments would be contrary to law, as the same violates the right of consumers. The CCPA being the regulator empowered by the CPA, 2019 to protect the rights and interest of the consumers has rightly framed the guidelines for barring the

mandatory collection of service charge by the restaurant establishments.

167. It also needs to be noted that there are no documents filed on record by the Petitioners to show in what manner service charge is collected and is disbursed to employees of the restaurant establishments. A mere argument that the same is for staff welfare would not be sufficient to satisfy the Court when no documents are forthcoming in this regard.

168. As per the Petitioners themselves, the collection of service charge has to be mentioned on the menu/display board of the restaurant establishments so as to inform the customer beforehand about the collection of service charge. In case of restaurant establishments which do not mention the same, the stand of the Petitioner is that no relief is being sought *qua* such Petitioners.

169. There are a large number of establishments which do not also charge service charge. Thus, the relief in these petitions is being sought only in respect of such establishments who mention the factum of collection of service charge on the menu cards and make it mandatory.

170. The illegality in the collection of service charge is three fold:

(i) That it is mandatory and compulsory to pay an extra amount for service given by the restaurant establishment and the same cannot be waived off even at the request of the consumer, who may be dissatisfied by the service.

(ii) The nomenclature associated with respect to collecting the charge *i.e. 'levy'* and '*service charge'* is misleading the consumers;

(iii) Further, the same is not transparently being made visible to the consumers thereby affecting the consumer's right to know.

171. On all these elements, the Court agrees with the impugned guidelines issued by the CCPA *inter alia* stipulating that service charge ought not to be collected as a mandatory form of payment for service rendered by the restaurant establishments. Further, the terminology used by the restaurant establishments to collect the same misleads the consumers into believing that it is some kind of a tax or levy by the State.

172. The argument that establishments are entitled to charge for their services in the manner as they do so deem fit, is an argument which is appealing at first blush. However, the same does not withstand closer scrutiny. Establishments are free to include the charge for their services within the charge for the products itself. In fact, such a position has been upheld by the Supreme Court in the judgment ***Federation of Hotel and Restaurant Association of India v. Union of India (UOI) and Ors. (supra)*** wherein the Supreme Court did not interfere with the decision of the High court which *inter alia* observed that the restaurant establishments selling mineral water in excess of MRP printed on the packaging, did not violate any law as the same did not merely constitute a sale or transfer of commodities by the restaurant establishment to its customers. The relevant paragraphs of the judgment are extracted hereinunder for a ready reference:

> *"13. On a reading of the said Act and the Rules made thereunder, it is clear that the position qua "sale" remains exactly the same as that contained in the 1976 Act, which now stands repealed. This being the case, we are of the view that the learned Single Judge was absolutely correct in his conclusion that despite*

> *the constitutional amendment having been passed, the definition of "sale" contained both in the 1976 Act and now in the 2009 Act would go to show that composite indivisible agreements for supply of services and food and drinks would not come within the purview of either enactment, and that this is for the very good reason that the object for both these enactments is something quite different-the object being, as has been pointed out above, to standardize weights and measures for defined goods so that quantities that are supplied are thus mentioned on the package and that MRPs are mentioned so that there is one uniform price at which such goods are sold.*
>
> *Xxx*
>
> *17. We are, therefore, of the view that neither the Standards of Weights and Measures Act, 1976 read with the enactment of 1985, or the Legal Metrology Act, 2009, would apply so as to interdict the sale of mineral water in hotels and restaurants at prices which are above the MRP."*

173. The said argument of establishments, therefore, that the component of service justifies or entitles them to mandatorily charge the customers for the service provided in the manner of a separate charge such as the service charge, is wholly baseless, inasmuch as products can be priced in a manner so as to include the charge for the services provided.

Conclusion:

174. The Court concludes as under:

(i) The CCPA is the authority fully empowered and has the jurisdiction to pass the guidelines under the CPA, 2019. In fact, issuing guidelines in consumer interest is an essential function of CCPA under Section

18(2)(l) of the CPA, 2019. The said guidelines would have to be mandatorily complied with as the scheme of the Act clearly provides for enforcement of guidelines;

(ii) The guidelines issued by the CCPA would not curtail fundamental rights under Article 19(1)(g) in any manner in view of the discussion above as the guidelines are in the larger interest of the consumers and have been issued in accordance with law;

(iii) Service charge or TIP as is colloquially referred, is a voluntary payment by the customer. It cannot be compulsory or mandatory. The practice undertaken by the restaurant establishments of collecting service charge that too on a mandatory basis, in a coercive manner, would be contrary to consumer interest and is violative of consumer rights;

(iv) The collection of service charge and use of different terminologies for the said charge is misleading and deceptive in nature. The same constitutes an unfair trade practice under Section 2(47) of the CPA, 2019;

(v) The justification being given on behalf of the Petitioners for collection of service charge, that they are part of labour settlements and agreements with staff, is not supported by any material on record and the same is accordingly rejected;

(vi) The fact that service charge can be collected as it is part of a voluntary contract/agreement made by the consumer who enters the establishment and avails of the services after seeing the chargeability of service charge on the menu card is an argument which is not tenable

as such a condition is onerous and constitutes an unfair contractual condition under Section 2(46) of the CPA, 2019;

(vii) Consumer rights cannot be subjugated to an argument that a contract is being entered into by the consumer while entering the establishment to pay service charge as the payment and collection of service charge is itself contrary to law;

(viii) While this Court holds that the mandatory collection of service charge is contrary to law and violates the guidelines, it is also of the opinion that if consumers wish to pay any voluntary Tip for services which they had enjoyed, the same would obviously not be barred. The amount however, ought not to be added by default in the bill/invoice and should be left to the customer's discretion.

(ix) The CCPA may consider permitting change in the nomenclature for Service Charge which is nothing but a 'Tip or a gratuity or a voluntary contribution'. Terminology such as 'voluntary contribution', 'staff contribution', 'staff welfare fund' or similar terminology can be permitted. The use of the word 'service charge' is misleading as consumers tend to confuse the same with service tax or GST or some other tax which is imposed and collected by the government.

175. The guidelines framed by the CCPA are thus valid and are in the interest of the consumers and the same are upheld.

176. All restaurant establishments would have to adhere to the guidelines passed by the CCPA. If there is any violation of the same, action would be liable to be taken in accordance with law. CCPA is free to enforce its

guidelines in accordance with law.

177. The writ petitions along with applications, if any, are dismissed with costs of Rs.1 lakh each to be deposited with Central Consumer Protection Authority to be utilized for consumer welfare.

PRATHIBA M. SINGH
JUDGE

MARCH 28, 2025
Rahul/Rks