

LAWCHAKRA.IN

IN THE CONSUMER DISPUTES REDRESSAL COMMISSION, THRISSUR

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

26th day of September 2023
CC 191/20 filed on 03/03/2020

Complainant : George Thattil, Thattil Mapranathukkaran House,
Varakara P.O., Thrissur District.
(By Adv. A.D.Benny, Thrissur)

Opposite Party : 1. The Proprietor, Chukkiri Royal Bakery,
Kuruvapadi P.O, Varakara, Pin – 680 303,
Thrissur District.
(Ex-parte)
2. Britania Industries Ltd, Rep. by Managing Director,
Prestige, Shanthinikethan, Tower C,
White Field, Bangalore – 500 048.
(Ex-parte)

FINAL ORDER

By Sri.Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under section 12(1) of the Consumer Protection Act 1986. The complainant statedly purchased 2 packages of “Britania Nutri Choice Thin Arrow Root Biscuits” from the first opposite party shop on 04/12/2019, paying them at the rate of Rs. 40/- (Rupees forty only) towards its cost. These products are statedly manufactured by the second opposite party. The quantity of the product was assured to be 300g each. Markings on the packages were statedly read as “PKD-12-11-2019, LOT No: A1119HO, Machine Code 303A”. The complainant statedly found that one of the said packages weighed only 268g and the other 249g only. The complainant therefore launched a petition before the Assistant Controller, Flying Squad, Legal Metrology, Thrissur, on 10/01/2020, and the latter statedly verified and

confirmed the shortage in weight. The opposite parties' act of having packed and/or sold, as the case maybe, products with quantities less than that declared, allegedly caused agony, hardship and loss to the complainant. Hence the complaint. The complainant prays for an order restricting the opposite parties from adopting such illegal practices, apart from other reliefs of compensation and costs.

2) NOTICE :

The Commission issued notice to both the opposite parties. Both the opposite parties failed to file their written version before the Commission, despite their having received the Commission's notice to that effect. Hence proceedings against both the opposite parties were set exparte.

3) Evidence :

The complainant produced documental evidence that had been marked Ext.A1, apart from affidavit and notes of argument. The Material object produced by the complainant was marked MO1.

4) Deliberation of facts and evidence of the case

The Commission has very carefully examined the facts and evidence of the case. Ext.A1 is the complainant's petition dated 10/01/2020 to the Assistant Controller, Flying Squad, Legal Metrology, Thrissur, whereon the latter endorsed his certificate dated 10/01/2020 regarding weight of the packages of Biscuits in question. MO1 is a package bearing declarations - "BRITANIA NUTRI CHOICE THIN ARROW ROOT BISCUITS, BISCUITS NET WEIGHT 300g".

5) Points of deliberation:

- (i) Whether the complainant succeeded in establishing the allegation of short weight in MO1 package?
- (ii) Whether the act of the opposite parties is tantamount to unfair trade practice or whether there is any deficiency of service on the part of the opposite parties?
- (iii) Whether the complainant is entitled to receive any compensation from the opposite parties? If so its quantum?
- (iv) Costs?
- (v) Other reliefs,, if any, necessary?

6) Point No.(i)

MO1 package bears the following declarations amidst others. “BRITANIA NUTRI CHOICE THIN ARROW ROOT BISCUITS, BISCUITS NET WEIGHT 300g, MRP₹ (INCL ALL TAXES) 40.00, PKD 12/11/2019, LOT NO. A1119HO, MACHINE CODE 303A, BEST BEFORE 6 MONTHS FROM PACKAGING, FOR FEEDBACK CONTACT: EXECUTIVE, CONSUMER CARE CELL, PH.:(TOLL FREE) 1-800-4254449/1-800-3000453 @ BRITANIA INDUSTRIES LTD., PRESTIGE SHANTHINIKETAN, TOWER C, WHITEFILED, BANGALORE-560 048, KARNATAKA. EMAIL: feedback@britindia.com, MARKETED BY BRITANIA INDUSTRIES LTD, 5-1A HUNGERGORD STREET, KOLKATA-700017, WB (A WADIA ENTERPRISE)”. These declarations made on the package by its manufacturer, ie., the second opposite party herein, unequivocally reveal that the declared net weight of the product namely “Britania Nutri Choice Thin Arrow Root Biscuits” is 300g. The complainant has very specifically mentioned the manufacturing details: “Lot NO. A1119HO, Machine Code 303 A, PKD 12/11/2019”, that were available on MO1 package, in his Ext.A1 petition filed before the Legal Metrology Officer and the

endorsement of verification dated 10/01/2020 made by the latter on Ext.A1 document explicitly reveals that the 2 packages in question purchased by the complainant, weighed only 269g, and 248g, respectively, and that the one that weighed 248g was returned to the complainant for legal action through Consumer Forum. The endorsement made by the Legal Metrology Officer signals that the gross weight of MO1 package (weight of the wrapper + weight of the product ie., Biscuit) is only 248g whereas the net weight (weight of the product ie., biscuits alone) declared by the second opposite party manufacturer is 300g. It is axiomatic that there is drastic shortage in the net weight of the biscuit in MO1 package, to be more specific in terms of quantity, the shortage in net weight is more than 52g (300-248) in MO1 package. The Department of Legal Metrology is, by law, vested with the power to enforce the Legal Metrology Act, 2009 and the Rules made there under. In the light of the certificate endorsed by the LMO on Ext. A1 and in the absence of any evidence to the contrary, we find no reason to disbelieve the contentions raised by the complainant and we are of the opinion that the complainant was able to cogently establish that there was shortage of net quantity in respect of MO1 package of biscuits manufactured by the second opposite party, that he statedly bought from the 1st opposite party shop/dealer.

Point No-(i) is therefore proved in favour of the complainant.

7) Point No.(ii)

As elaborated under point No.(i) above, the MO1 package of biscuits manufactured by the second opposite party and statedly sold to the complainant by the first opposite party shop, contained only biscuits less in weight by more than 52g from the declared net weight of 300g. The complainant, while buying the MO1 package paying its MRP of Rs. 40/-, is entitled to enjoy the full net quantity, declared, that is 300g of the biscuits. Obviously the opposite parties'

misdeed of having sold or caused to be sold to the consumer, as the case may be, articles in quantities less than that he paid for, constitutes an unfair trade practice on their part.

More over section 30 of the Legal Metrology Act, 2009, reads as follows:

Section 30 of the Legal Metrology Act, 2009.

- a) Whoever, in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or*
- b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or*
- c) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or*
- d) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for, shall be punished with fine which may extend to ten thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.*

It is thus imperative that the first opposite parties' act of having sold to the complainant an article in quantities less than that he paid for, and second opposite party's act of having caused to do so by manufacturing a package containing less quantity of product than that declared, are both violative of section 30 of the Legal Metrology Act 2009, which in turn constitute deficiency in service on their part, as well, under section 2(1) (g) of the Consumer Protection Act, 1986.

Further, both the opposite parties have not cared either to file their written version or to contest the complainant before the commission, in spite of their

having received the Commission's notice to that effect. Their conscious, failure to file their written version, is tantamount to admission of the allegations levelled against them by the complainant. The Honourable National Commission held the same view by its order ***dated: 09/10/2017 in RP 579/2017 [2017(4) CPR590]***. All considered, we are of the contemplated view that there is deficiency in service as well as adoption of unfair trade practice on the part of both the opposite parties.

7) Point No.(iii) & (iv)

The opposite parties' misdeed of having delivered or caused to be delivered, as the case may be, articles in quantities less than that paid for, certainly has inflicted financial loss on the buyer –complainant herein. A Legal Metrology Officer (LMO), who is in receipt of a petition alleging shortage in net quantity of a packaged commodity, is duty bound, to proceed, as per law, against the accused manufacturer or dealer, as the case may be, as stipulated under Rule 19 to 23 of the packaged commodities Rules, 2011 r/w the pertinent schedule, but is not empowered under the Legal Metrology Act or the Rules made thereunder, to extend compensation for the loss, if any, incurred by the consumer, concerned. But the Consumer Protection Act, meant for the better protection of consumers at large from such acts of exploitation, provides the Commission with sufficient legal teeth to direct such wrong doers to pay the complainant such sum as determined by it, towards compensation for the agony and hardship inflicted on them. In the case at hand, the complainant, apart from the financial loss sustained, had also undergone agony and hardship-both mental and physical, as well.

While being subjected to a deceptive practice as the one cited, the person who undergoes such defrauding and swindling practice would certainly experience a whirlwind of emotions, irrespective of the size of the sum he or

she was defrauded with. Such a deceptive act from the part of an erring manufacturer or trader is tantamount to jeopardizing the very dignity of the consumer and his right to live a life free from exploitation or deception or any kind of unfair trade practice. The opposite parties have necessarily to compensate the complainant. We are of the considered view that the complainant is entitled to receive from the opposite parties a sum of Rs. 50,000/-(Rupees fifty thousand only) towards compensation for the financial loss, agony and hardship-both mental and physical, that he underwent, and a sum of Rs. 10,000/-(Rupees ten thousand only) towards costs.

7) Point No.(V)

As elaborated supra, the illicit practice adopted by the opposite parties, in the instant case, is evident. An order directing the opposite parties to discontinue such illicit practices, also seems essential to meet the ends of justice.

As stated under the forgoing points, a petition as the one of the sort of Ext. A1, mandates action under Rule 19 to 23 of the Packaged Commodities Rules, 2011, on the part of the LMO, concerned. A shortage of more than 52g out of the 300g of net quantity declared, signals unjust enrichment of astronomic proportion by producers, when the voluminous production such manufactures do per hour or day, is considered. The impact involved is not trivial, as it appears, when the sale of one or two of such short weighing packages alone is thought about. Therefore a further direction to the Controller of Legal Metrology, Kerala to initiate steps, to ensure the net quantity compliance of the product/Packaged Commodity in question, also appears essential with a view to protecting the consumers, at large, from such swindling practices.

In the result, the complaint is allowed and the opposite parties are jointly and severally directed to:

a) pay the complainant a sum of Rs.50,000/- (Rupees fifty thousand only) towards compensation for the financial loss, agony and hardship he underwent, and

b) pay the complainant a sum of Rs.10,000/- (Rupees ten thousand only) towards costs,

both with 9% interest per annum from the date of filing of complaint till the date of realisation. The opposite party shall comply with the above directions within 30 days of receipt of a copy of this order.

The opposite parties are further directed to discontinue, with immediate effect, the illicit practice of selling or causing to be sold, as the case maybe, any commodities or articles, in quantities less than that declared or paid for or contracted for.

The Controller of Legal Metrology, Kerala shall forthwith organise state-wide inspections, to ensure the Net Quantity compliance of the packaged commodity in question and such other products manufactured or marketed by the second opposite party manufacturer. The Registry shall forward a copy of this order to the Controller of Legal Metrology, Kerala for necessary action as per law on the part of the latter.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 26th day of September 2023.

Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Appendix

Complainant's Exhibits and Material Objects:

Exhibit A1. Is the complainant's petition dated 10/01/2020 to the Assistant Controller, Flying Squad, Legal Metrology, Thrissur, where on the latter endorsed his certificate regarding weight of the packages of Biscuits in question.

MO1: is a package bearing declarations – “BRITANIA NUTRI CHOICE THIN ARROW ROOT BISCUITS, BISCUITS NET WEIGHT 300g”

Id/-
Member

//True copy//

Assistant Registrar

