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2023:DHC:6490

$~1(SB) & 2(SB)

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

Date of Decision: 5th September, 2023

\+ **W.P.(C) 10683/2022 & CM APPLs. 31033/2022, 38992/2023 & 45891/2023**

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

Through: Dr. Lalit Bhasin, Ms. Nina Gupta, Ms. Ananya Marwah & Mr. Ajay Pratap Singh, Advocates. (M: 9953947026)

versus

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

Through: Mr. Sandeep Mahapatra and Mr. Kirtiman Singh, CGSCs with Mr. Abhinav Bansal, Ms. Vidhi Jain, and Ms. Kritika Sharma, Advs.

2(SB) AND

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

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

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Sameer Parekh, Mr. Sumit Goel, Ms. Sonal Gupta, Ms. Swati Bhardwaj & Mr. Abhishek Thakral, Advs. (M: 7042611876s)

versus

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

Through: Mr. Sandeep Mahapatra and Mr. Kirtiman Singh, CGSCs with Mr. Sugam Kr. Jha, Ms. Osheen Verma, Mr. Abhinav Bansal, Ms. Vidhi Jain, and Ms. Kritika Sharma, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioners in the present petitions are Associations of hotel and restaurant owners. The challenge in these writ petitions is to the guidelines dated 4th July, 2022 issued by the Central Consumer Protection Authority *(hereinafter 'CCPA')* and the consequential communication issued on 6th July, 2022 to all the District Collectors for enforcing the guidelines of 4th July, 2022.

3. Notice was issued in the present two petitions on 20th July, 2022. On the said date, the Court stayed the effect of paragraph 7 of the impugned Guidelines dated 4th July, 2022. The said stay order was subject to the condition that the members of the Petitioner associations prominently display on the menu and other places that 'Service Charge' is being charged by the establishment. It was also directed that the no 'Service Charge' be included on 'take-away' items. Thereafter, an appeal was preferred against the order dated 20th July, 2023 by the Respondents challenging the interim stay of the guidelines dated 6th July, 2022. Vide order dated 18th August, 2022, the ld. Division Bench of this Court remanded the matter, with the direction to pass appropriate orders in respect of the application for vacating the stay order issued on 20th July, 2023.

4. Vide order dated 12th April, 2023, this Court while taking up both these petitions for hearing had issued the following directions:

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.

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.

6. As per Mr. Sethi, ld. Senior Counsel appearing for FHRAI, no 'Service Charge' is being charged on delivery services.

7. The Court has heard ld. Counsels for both the associations as also the Union of India. The position that has now been revealed to the Court pursuant to the order dated 12th April, 2023, would show that the membership of both these associations is not as claimed in the writ petitions to be in lakhs. But the position that they now put forth is that these two associations being the apex bodies represent the interests of the hotels and restaurants all across India – which are lakhs in number, though they do not represent them.

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'.

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.

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.

12. List these matters on 3rd October, 2023 at the top of the Board after the supplementary list. If the writ petition cannot be finally heard, the application for vacation of stay shall be considered and appropriate orders shall be passed. If ld. Counsel wish to file any written submissions they may do so at least three days before the next date of hearing.

CM APPL.38992/2023 (for waiving of costs) in W.P.(C) 10683/2023

13. There is no ground made out for waiving of costs. The costs shall be deposited within four weeks.

14. The application is dismissed.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 05, 2023/*dk/ams*