

The new guidelines to prevent unfair trade practices

Why has the Central Consumer Protection Authority issued new guidelines? How do they protect consumer interests?

G.S. BAJPAI
MEHAK BAJPAI
SANGEETA TAK

The story so far: On July 4, the Central Consumer Protection Authority (CCPA) announced five guidelines to prevent unfair trade practices and to protect consumer interests regarding the levy of service charges in hotels and restaurants. The guidelines are in addition to the Centre's 2017 guidelines which prohibit the levy of service charges on consumers by hotels and restaurants, and terms the charging for anything other than "the prices displayed on the menu card along with the applicable taxes" without "express consent" of the customer as "unfair trade practices".

What are the powers of the CCPA? The CCPA has been established to regulate matters related to the violation of the rights of consumers. Under the Consumer Protection Act (CPA), 2019, the authority was established to regulate violations of consumer rights, unfair trade practices, and false or misleading advertisements that are prejudicial to the interest of the public.

The CCPA has authority under section 18 of the CPA, 2019 to protect, promote and most importantly enforce



the rights of the consumers and prevent violation of their rights under the Act. It also seeks to ensure that no person engages in unfair trade practices. It is also empowered to issue guidelines to enforce the rights of the consumers laid down in the Act. The authority has issued a letter to the Chief Secretaries of the States on service charge imposition, asking them to ensure compliance with the new guidelines on service charges. It has also been said that the State should instruct all the district magistrates to take appropriate action against violations of the guideline.

What is a service charge?

A service charge is a tip or a direct transaction between the customer and the restaurant staff, specifically the wait staff.

It is a fee collected to pay for services associated with the purchase of a primary product or service. It is collected by hospitality sectors and food and beverage industries as a fee for serving customers.

What do the new guidelines specify?

As per the new guidelines, hotels or restaurants are prohibited from levying extra charges automatically or by default in the bill or by any other name. Also, they are not allowed to force service charges, and must clearly inform the consumers that service charges are voluntary, optional, and at their discretion. Most importantly, hotels and restaurants are no longer allowed to restrict entry or services based on the collection of service charges. Furthermore, hotels cannot add service charges to their bills and charge GST on the total.

The point here is that any tip, donation, token, gratuity, etc., is no longer permitted to be charged and shall be considered as a separate transaction between the consumer and the staff of the hotel and restaurant. It is entirely up to the consumer to decide whether or not to tip. If a consumer enters a restaurant or orders something, the restaurant policy cannot

require them to tip. Therefore, consumers cannot be forced to pay a service charge without having the choice to decide whether they want to do so.

Why were new guidelines issued?

The CCPA has taken cognisance of various grievances that were registered on the National Consumer Helpline (NCH) related to the unnecessary levying of service charges in the bill. Usually, this charge is levied in addition to the total price of the food items mentioned on the menu and applicable taxes, often in the guise of some other fee. The said guidelines now consider charging a customer other than the price of food items displayed on the menu along with applicable taxes, as an 'unfair trade practice' under the CPA.

In general, the price of any product covers both the cost of the product and the cost of the service. This implies that the price of food and beverages served in the hotels and restaurants includes the price of the 'service'. There is no restriction on hotels or restaurants to set the prices at which they want to offer food or beverages to consumers. Placing an order involves consent to pay only the prices of food items displayed on the menu along with applicable taxes. Charging anything other than the

said amount would amount to 'unfair trade practice' under the Act.

What are the redressal mechanisms?

If any consumer finds that a hotel or restaurant is levying a service charge in violation of these guidelines, they may request the concerned hotel or restaurant to remove the service charge from the bill or may lodge a complaint on the NCH, which works as an alternate dispute redressal mechanism at the pre-litigation level by calling 1915 or through the NCH mobile app. A complaint may also be filed against unfair trade practice with the Consumer Commission electronically through edaakhil.nic.in for its speedy and effective redressal.

As a result of these new guidelines, consumers will no longer be subject to involuntary payments under the heading of 'service tax'. However, it will be interesting to observe the effective compliance of these guidelines by restaurants since levying a service charge has become an 'accepted trade practice' in India.

G.S.Bajpai is Vice-Chancellor, Rajiv Gandhi National University of Law, Punjab where Sangeeta Tak is Assistant Professor. Mehak is a research scholar at National Law University, Delhi

THE GIST

■ On July 4, the Central Consumer Protection Authority (CCPA) announced five key guidelines to prevent unfair trade practices regarding the levy of service charges in hotels and restaurants.

■ Service charge is a fee collected to pay for services associated with the purchase of a primary product or service. It is collected by hospitality sectors and food and beverage industries as a fee for serving customers.

■ If any consumer finds that a hotel or restaurant is levying a service charge in violation of these guidelines, they may lodge a complaint on the NCH by calling 1915 or through the NCH mobile app. A complaint may also be filed through edaakhil.nic.in for effective redressal.