

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ERNAKULAM**

Dated this the 15th day of May, 2025

Filed on: 14/08/2024

PRESENT

Shri. D.B. Binu
Shri. V. Ramachandran
Smt. Sreevidhia T.N

Hon'ble President
Hon'ble Member
Hon'ble Member

CC.No. 1011 of 2024

Complainant

Sree Raj Pradeep Kumar, S/o Pradeep Kumar.N.S, Apartment "E", Manha
Apartment Nettoor INTUC Road, Near Dhanya Junction, Nettoor.P.O, Ernakulam,
Kerala-682040.

(Permanent Address)

Euphoria, Building No.7/A, Peruvikonam, Peyad- Vilappil Road, Near Kollamkonam
Junction, Vilappil.P.O, Thiruvanathapuram, Kerala-695573.

VS

OPPOSITE PARTY:

Authorized Officer, M/s Pagariya Food Products (P) Ltd, Plot No.302-A, Phase-2,
KIADB Industrial Area, Harohalli, Taluka Kanakapura, Ramanagaram Dist.
Karnataka-562112.

FINAL ORDER

D.B. Binu, President

A brief statement of facts of this complaint is as stated below:

The complainant filed this complaint under Section 35 of the Consumer Protection Act, 2019. On 18.07.2024, he purchased a sealed 700 g packet of "KWALITY MIX FRUIT MUESLI" manufactured by M/s. Pagariya Food Products (Pvt) Ltd from M/s. Bismi Hypermart, Nettoor outlet. The product, with a manufacturing date of 06.04.2024 and expiry date of 05.01.2025, was offered at a 50% discount and appeared visually intact

and well-branded. Upon consumption, the complainant detected a foul odour and later discovered dead worms and webbing in the product. He immediately documented the issue and raised a complaint with the manufacturer, who merely responded by sending a replacement packet without addressing the health and safety concerns. Dissatisfied with this response, the complainant approached the Food Safety Officer, Tripunithura, on 20.07.2024. Laboratory tests confirmed the presence of dead worms, rendering the product unfit for consumption. The matter was referred to higher food safety authorities. Due to this incident, the complainant suffered mental agony, loss of trust in packaged food products, and disruption in his daily routine. He now seeks redressal from the Commission.

2. NOTICE:

The Commission issued notice to the opposite party on 11.09.2024. The opposite party appeared before the Commission on 24.09.2024, and the case was posted for mediation. However, the opposite party failed to file its version within the statutory period, and therefore, was set ex parte on 30.12.2024.

3. Evidence:

The complainant submitted a proof affidavit along with seven documents. The documents in the complaint are marked as **Exhibits A1 to A7.**

- **Ext.A1** -Copy of Purchase Bill
- **Ext.A2** -Colour photograph of purchased packet
- **Ext.A3-** Colour photograph of objects
- **Ext.A4-** Copy of Email sent to manufacturer

- **Ext.A5-** Copy of complaint filed with Food Safety Office, Ernakulam.
- **Ext.A6-** Copy of Food Analyst Report
- **Ext.A7-** Copy of Reply given by the Food Safety Office, Tripunithura.

4. Points for Consideration:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice by the opposite parties?
- iii) If so, whether the complainant is entitled to any relief?
- iv) Costs of the proceedings, if any?

5. Summary of Written Argument Of the Complainant

The complaint was filed under the provisions of the Consumer Protection Act, 2019, as the complainant is a "consumer" under Section 2(7) of the Act. The opposite parties, being manufacturers and sellers of food products, are "service providers" and are liable under the Act for any deficiency in service or sale of defective goods.

FACTS OF THE CASE

- a. The complainant purchased a sealed packet of 'KWALITY MIXED FRUIT MUESLI', weighing 700 grams, from M/s Bismi Hypermarket, Nettoor, Kochi, which was manufactured by M/s Pagariya Food Products. The purchase was made for the complainant's daily breakfast needs. The copy of the purchase bill is produced as **Exhibit A1**, and a photograph of the packet is marked as **Exhibit A2**.

- b. Upon opening the sealed packet and consuming a portion, the complainant noticed an unusual odour and later discovered dead worms inside the packet. The photograph of the contaminated contents is submitted as **Exhibit A3**.
- c. The complainant took immediate action and reported the issue to the manufacturer via email on 19.07.2024. The email sent to the manufacturer is submitted as **Exhibit A4**. The opposite party replied the same day, stating that they would investigate the matter, but no substantial response was provided.
- d. Dissatisfied, the complainant submitted a written complaint to the Food Safety Officer, Tripunithura, on 20.07.2024, which is marked as **Exhibit A5**. The Food Safety Officer collected the sample from the complainant's packet and also took surveillance samples from the same batch at M/s Bismi Hypermarket and forwarded them for scientific analysis at the Regional Analytical Laboratory, Kakkanad, Kochi.
- e. The lab report dated 26.07.2024, bearing reference No. SS/46/TRPA/07/2024 confirmed the presence of dead worms and webbing, making the product unfit for human consumption. This Food Analyst Report is submitted as **Exhibit A6**.
- f. The Food Safety Officer, Tripunithura, also forwarded the matter to the central authorities for further action, given that the manufacturing company is based in Karnataka. A copy of this communication from the Food Safety Officer is produced as **Exhibit A7**.

g. In *Sri Rajanesh Swamy and Baby Shamal v. M/s Cadbury India Limited (2005)*, the Hon'ble State Commission held Opposite Party No. 1 guilty of selling defective chocolates through its network of retailers, which amounted to a deficiency in service, and directed it to pay compensation to the complainants. Further, held in *Hindustan Coca-Cola Beverages Pvt. Ltd. v. Girish Sharma (2013)*, misrepresentation regarding food quality creates wrongful consumer dependency and amounts to unfair trade practice. Under the principle of strict liability, manufacturers are fully responsible for ensuring their products are safe for consumption. In *Nestle India Ltd. v. FSSAI (2015)*, the **Hon'ble Bombay High Court** emphasised this duty by upholding the ban on Maggi noodles.

We have also noticed that a Notice was issued by the Commission to the opposite party, but they did not file their version. Hence, the opposite party set ex parte. The complainant had produced seven documents marked as Exbt.A-1 to A-7. All in support of his case. However, the opposite party did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex parte order passed against them. It was further stated that this illegal, arbitrary and unjustified act of the Opposite Party amounted to a deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainant.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite party. We have no reason to disbelieve the words of the complainant. **The Hon'ble National**

Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

We have meticulously considered the detailed submissions of the complainant, as well as thoroughly reviewed the entire record of evidence, including the argument notes. It is noted that the opposite party have failed to submit any argument notes or participate in the proceedings.

i). Maintainability:

The complainant is a consumer as defined under Section 2(7) of the Consumer Protection Act, 2019, having purchased a sealed food product for personal use (**Exhibit A1**). The opposite party is a manufacturer and falls under the definition of "product manufacturer" under Section 2(36) of the Act. Therefore, the complaint is maintainable under Section 35 of the Act.

ii). Deficiency in Service and Negligence:

The presence of dead worms and webbing in a sealed food product clearly points to a gross deficiency in service as defined under Section 2(11) of the Consumer Protection Act, 2019. The lab report (**Exhibit A6**) issued by the Regional Analytical Laboratory, Kakkanad, confirms the unfitness of the product for human consumption.

The opposite party neither denied nor responded meaningfully to the allegations nor participated in the proceedings despite notice. Their silence and failure to file a version is deemed an admission of the allegations as held in **(2017) 4 CPR 590 (NC)**.

The reliance placed by the complainant on **Swapan Dhar v. Kelloggs India Pvt. Ltd. (2019)**, and **S. Indumathi v. Nestle India Ltd. (2015)**,

supports the principle that manufacturers are strictly liable for the quality of the goods they sell.

Product Liability

The detection of a dead worm in a sealed food packet amounts to a gross deficiency in service under Section 2(11) of the Consumer Protection Act, 2019. This provision defines deficiency as any shortcoming in quality, performance, or service expected by law or contract. The manufacturer's failure to ensure food safety and quality reflects clear negligence and disregard for consumer health. Additionally, the absence of timely remedial action or transparency further aggravates the situation. The complainant's reliance on the brand's reputation and safety claims was betrayed, resulting in mental agony, health risks, and loss of trust in packaged food products.

Unfair Trade Practice:

The opposite party has displayed gross negligence by allowing a contaminated food product to reach the market. Although the product is advertised and marketed as safe, hygienic, and of premium quality, the discovery of a dead worm inside a sealed packet directly contradicts these claims. Such contamination not only undermines consumer trust but also reveals serious lapses in quality control and food safety compliance, rendering the promotional assertions false and misleading. This amounts to an unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019.

In *M/s Modern Bread Company v. Thomas T.V.* (AS No. 346/2014), the Hon'ble Kerala State Consumer Disputes Redressal

Commission held that the complainant was entitled to compensation for mental agony and distress caused by the defective food product.

The Food Analyst's report confirmed the violation of safety norms. As per Sections 26 and 27 of the Food Safety and Standards Act, 2006, the manufacturer has to ensure the product's safety. Violation of these standards also constitutes a legal offence.

In *Rajanesh R. Swamy v. Cadbury India Ltd. (2005)*, the **Hon'ble Karnataka State Commission** held the manufacturer liable for defective products, reinforcing that responsibility for product safety cannot be shifted to intermediaries like suppliers or retailers. These rulings affirm that consumers rely on a brand's reputation and are entitled to safe, defect-free products.

Liability of the Opposite Party:

Under Sections 83 and 84 of the Consumer Protection Act, 2019, the opposite party is strictly liable for the defective product. The failure to participate in the proceedings further strengthens the complainant's case.

This aligns with the principle laid down in the landmark case *Donoghue v. Stevenson [1932] AC 562*, where the House of Lords established the foundational doctrine of product liability. The Court held that a manufacturer owes a duty of care to the ultimate consumer to ensure that the products placed in the market are free from harmful defects. This case continues to serve as a cornerstone in consumer protection law, affirming that negligence in the manufacturing process, even without a direct contractual relationship, can result in liability when consumer safety is compromised.

This case is a stark reminder of the trust consumers place in branded and packaged food products in their daily lives, and how that trust can be shattered by a single act of negligence. The complainant, a working professional with limited time for daily routines, opted for a convenient breakfast option with the confidence that the product met basic safety and hygiene standards. The shocking discovery of dead worms in a sealed packet not only disrupted his routine but left a lasting sense of anxiety and mistrust toward packaged food. The inaction of the manufacturer, even after being alerted, compounded the distress. Every manufacturer must uphold the fundamental right of the consumer to safe and reliable products. This Commission acknowledges the emotional and psychological toll that such violations inflict and stands firm in its resolve to ensure accountability and justice.

We determine that issue numbers (I) to (IV) are resolved in the complainants' favour due to the significant service deficiency on the part of the Opposite Party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the Opposite Party.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

I. The opposite party shall refund the purchase cost of ₹265.50 (Rupees Two Hundred Sixty-Five and Paise Fifty Only) to the complainant, as per Exhibit A1.

II. The opposite party shall pay ₹20,000/- (Rupees Twenty Thousand Only) to the complainant as compensation for mental agony, financial loss, and

inconvenience. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainant.

III. The opposite parties shall pay ₹10,000/- (Rupees Ten Thousand Only) to the complainant towards the cost of the proceedings.

IV. The Opposite Party is directed to implement strict quality control mechanisms and avoid recurrence of such instances.

The opposite party is liable for the fulfilment of the above orders. These orders must be executed within 45 days from the date of receiving this order. Failure to comply with the payment orders under Points I and II will result in an interest rate of 9% per annum from the date of filing the complaint (14.08.2024) until the date of full payment realisation.

Pronounced in the Open Commission this the 15th day of May, 2025.

D.B. Binu, President

V. Ramachandran, Member

Sreevidhia T.N, Member

APPENDIX

Complainant's Evidence:

- Ext.A1- Copy of Purchase Bill
- Ext.A2- Colour photograph of purchased packet
- Ext.A3- Colour photograph of objects
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- Ext.A6- Copy of Food Analyst Report
- Ext.A7- Copy of Reply given by the Food Safety Office Tripunithura.

Opposite Parties' Evidence: NIL

Date of Despatch

By Hand::

By post::

BR/