Date of Filing: 02.03.2021
Date of Order: 25.04.2022

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION – I, HYDERABAD

Present

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

On this the Monday the 25th day, of April, 2022

C.C.No. 154 of 2021

Between

Rajkumar Gummi,
Flat No. 204, Dwaraka Residency ,
Sai Chitra Nagar, Lane No.7, Ramanthapur,
Hyderabad – 500013.
Mobile No. 9966665049. Email : rajkumar910@gmail.com

....Complainant

And

UBER India Systems Private Limited,
Platinum Techno Park, Level 13,
Plot No. 17/18, Sec-30A, Vashi,
Navi Mumbai, Maharashtra – 400705.
Email. India-legal@uber.com / LERT@uber.com

....Opposite Party

Counsel for the Complainant : Party-In-Person
Counsel for the Opposite party : Mr.M. Sravan Kumar

ORDER

(By HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER on behalf of the bench)

1. The present complaint is filed u/Sec.35(1) (a) of The Consumer Protection Act, 2019 alleging unfair trade practice on the part of the Opposite Party in collecting cancellation charges even when the confirmed trip is cancelled by the Opposite Party themselves, and hence seeking appropriate direction to the Opposite Party

i) To pay same amount charged as cancellation fee to customers, whenever the Opposite Party cancels the trip unilaterally for any reason from their side;

ii) To refund to all its users from whom cancellation fee was collected across India from 23/7/2020(date of notification of Consumer Protection (E-Commerce) Rules 2020 till date.

Prasanna

2. Brief facts of the case are:-

As per the averments of the complaint, the complainant, is a registered user of the travel/commuting services of the Opposite Party since 2015 (Ex A-1). It is averred by the complainant that the Opposite Party charges cancellation fee uberGO:Rs.50/-; uberX:Rs.80/-; uberSUV:Rs.100/- and before the user cancels a cash trip, the user receives a notification/message that the cancellation fee will be added to their next trip and after completing the next trip, the total fare payable by the customer/user includes the previous trip's cancellation fee in addition to the fare of the current trip. It is the case of the complainant that the charging of cancellation fee by the Opposite Party, even when the Opposite Party unilaterally cancels the confirmed trip for any other reason from their side, other than cancellation by the customer/user causing enormous inconvenience due to last minute cancellation by the Opposite Party without the consent of the customer/user, is not only an unfair trade practice but also in violation of the Consumer Protection(E-Commerce) Rules, 2020. Apparently, the complainant was charged Rs.27.44/- as cancellation fee on 1/6/2021 and another cancellation charges of Rs.37.45/- on 8/8/2021 under Ex A-1 wherein, the request was accepted and request was cancelled by the Opposite Party. It is averred by the complainant that whenever a confirmed ride/trip is unilaterally cancelled by the Opposite Party, either the user/customer should be compensated for the inconvenience caused to the customer/user by paying the same amount as cancellation charges collected from the customer/user or not charge the customer/user with the cancellation charges added to the next trip of the user/customer. Alleging that the charging of the cancellation fees by the Opposite Parties is not only an unfair trade practice but in violation of the Consumer Protection (E-Commerce) Rules, 2020, the complainant filed the present complaint seeking appropriate direction to the Opposite Party.

3. In the written version filed on behalf of the Opposite Party, while raising the preliminary objection that the complainant has no locus standi and not a consumer, as there is no pleading that he was aggrieved by the alleged cancellation charges, it was contended that the present complaint has been filed with malafide intentions to cause a dent to its well-earned goodwill and reputation in the market and to make unjust enrichment. It was also contended that the O.P neither unilaterally cancels the rides

District Commission-1, Hyderabad

Prasanna

booked by the customers nor unilaterally charges for cancellation but the user is given prior information of cancellation charges to be added up to his/her next trip since the O.P's driver partner had already taken a detour for reaching the customer rider pick-up point and the consent click –"yes, cancel" of the customer-rider is recognized as a

" click wrap" contract duly recognized and valid under the Information Technology Act,2000. It is also contended that the cancellation charges are not flat rate charges but proportional to the time invested and distance travelled by the driver-partner in reaching the customer-rider's location. It is also contended that the cancellation charges are not retained by the O.P but passed on to the driver-partner to reimburse them for the distance travelled and time invested by them for reaching the customer-rider's location. It is further contended that cancellation charges are levied only after the customer has cancelled the ride after the rider grace period which is 180 seconds from the time the ride has been accepted by the driver-partner, and no cancellation charges are levied in case the driver-partner has not moved towards the customer-rider's location. It is also submitted by the Opposite Party that the customer-rider has an option to reach out on the in-App support for review of the cancellation fee, in case they feel they have been wrongly charged and after receipt of the feedback of the customer-rider, the O.P. review the record and the driver-partner's GPS tracking and if found that the cancellation fee is wrongly charged in error, the same is refunded to the customer-rider as credits to be used for their next trip. It is also contended that the O.P. attempts to substantially reduce cancellation induced by the driver-partners. It is also contended that even if the driver-partner cancels the booking of the trip of the customer-rider, the same does not automatically get cancelled as the O.P being an intermediary makes available the next ride to the customer-rider and connects/redirects him or her to a new driver-partner. It is submitted that the rides once booked using the Uber App by the customer rider are never unilaterally cancelled by the O.P till the customer-rider himself cancels the same. It is also submitted that O.P. is only a technology service provider platform, acting as an aggregator, connecting the driver-partner and customer-rider for availing and providing transportation services or taxi services. It is also contended that all driver-partners using the Uber-App work as independent contractors and are individually responsible for any acts of omissions and commissions by them and for any incidents that take place during the transport service. It is contended that the transaction between the complainant and the O.P is governed by the terms

Prasanna

and conditions of the user agreement (Ex B-2) at the time of availing the service. As per the terms & conditions, the customer-rider acknowledges that Uber India does not provide transportation or logistics services and that all transportation/logistics services are provided by independent third party contractors. Further, in its disclaimer, it is clearly mentioned that Uber India will not be liable for delay of failure in performance resulting from causes/reasons beyond Uber India's control. With the above contentions, the Opposite Party seeks for dismissal on the grounds that every thing is fair and in accordance with the terms and conditions without violation of any provisions of law in force.

4. In the enquiry, the complainant filed his evidence affidavit reiterating his submissions of the complaint and got marked Ex A-1 to A-3 including the Consumer Protection (E-Commerce Rules, 2020 and the Motor Vehicle Aggregator Guidelines-2020, while the Evidence affidavit of the Authorized signatory was filed on behalf of Opposite Party along with the terms and conditions marked as Ex B-2.

5. Based on the facts and material on record and the oral/written submissions of both the parties, the following points have emerged or consideration:

- Whether the complainant could make out the case of unfair trade practice on the part of the Opposite party?
- Whether the complainant is entitled for the claim/compensation made in the complaint? To what relief?

6. Point No.1:-

On the preliminary objections of maintainability and locus standi of the complainant, as per arc A-1, A-2 and A-3, the complainant is a registered user of the Opposite Party and has availed services on 21/07/2021 and 08/08/2021... suffice to say that the complainant is a consumer and there is cause of action for the present complaint.

The crux of the matter is whether the cancellation charges levied on the customer-rider by the O.P. even when the trip is cancelled from their side, amounts to unfair trade practice under the Consumer Protection Act?

Before adverting to the merits of the case, it is appropriate to refer to the relevant provisions of the Consumer Protection Act, 2019 and

District C... ...sion-1, Hyderabad

Prasanna

specifically the Consumer Protection (E-Commerce) Rules, 2020 governing the duties/role and liabilities of the e-platforms and the service providers in the supply-chain of the goods/services provided to the consumers/users.

Sec.2 (46) of the Act defines "unfair contract" as 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; and

Sec.2(47) defines "unfair trade practice" as a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:— (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;

And Sec.4(8) of the E-Commerce Rules 2020 provides that " No e-commerce entity shall impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne

Commission-1, Hyderabad

Prasanna

by the e- commerce entity, if they cancel the purchase order unilaterally for any reason.

In this context, it is also worth referring to Sub Sec.3 of. Section 178 of The Motor Vehicles Act, 1988, which states that, " If the holder of a permit or the driver of a contract carriage refuses, in contravention of the provisions of this Act or rules made thereunder, to ply the contract carriage or to carry the passengers, he shall,—

(a) in the case of two-wheeled or three-wheeled motor vehicles, be punishable with fine which may extend to fifty rupees; and

(b) in any other case, be punishable with fine which may extend to two hundred rupees.

It is pertinent to mention that The Ministry of Road Transport and Highways has issued the Motor Vehicle Aggregator Guidelines 2020 as per the requirements and provisions of the Motor Vehicles (Amendment) Act, 2019 and further as per the amended Section 93 of the Motor Vehicles Act, 1988. And Sec.14 of the said Guidelines categorically provide that- (1) On cancellation of a booking by a Driver, subsequent to accepting a ride on the App, a penalty of 10% of the total fare not exceeding Rs. 100, shall be imposed, when such cancellation is made without such valid reason that shall be stipulated by the Aggregator on its Website and on the App. (2) On cancellation of a booking by a Rider, subsequent to booking a ride on the App, a penalty of 10% of the total fare not exceeding Rs. 100, shall be imposed, when such cancellation is made without such valid reason that shall be stipulated by the Aggregator on its Website and on the App. The said amount shall [be divided between the Driver and the Aggregator in the same proportion as Clause '13(4) therein."

Thus, clearly the above Guidelines have not only introduced cancellation penalty for drivers at 10% of fare capped at Rs 100/- but also capped the surge pricing at 1.5 times higher than the base fare.

Clearly, all the above regulations and legal provisions require standard contracts (which are not individually negotiated) to be fair and equitable.

The Opposite Party has filed the terms and conditions of the User Agreement under Ex B-2.

To determine whether there is any unfair trade practice or unfair contractual terms and conditions in the user agreement (Ex B-2), it is important to understand that typically contractual terms which have not

Prasanna

been individually negotiated, are regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

Terms on this grey list which are commonly encountered include: (1) penalty clauses; (2) cancellation clauses which allow the seller/supplier/service provider (but not the consumer) to end a contract on a discretionary basis; (3) terms which irrevocably bind the consumer to terms which they had no opportunity of negotiating before the conclusion of the contract; (4) variation clauses which unilaterally enable the business entity to alter the terms of the contract without a valid reason specified in the contract; and (5) price escalation clauses which do not give the consumer a corresponding right to cancel the contract.

In the instant case, a perusal of the terms and conditions of the user agreement (Ex B-2) which is typically a clickwrap contract as stated by the Opposite Party, is presented on a 'take it or leave it' basis, and the terms and conditions therein are not only non-negotiable showing imbalance in the parties' rights and obligations arising under the contract, but also leaving the complainant with no meaningful choice. At the threshold of the User agreement, it is mentioned that the Opposite Party does not provide transportation or logistics services or function as a transportation carrier and that all such transportation or logistics services are provided by independent third party contractors who are not employed by Uber or any of its affiliates, inferring that the drivers-partners are crucial in the transportation service-provider chain management. However, Opposite Party being the interactive online platform as the ride-sourcing platform, it is important that the operational navigating algorithm is transparent and consumer-friendly.

One of the contentions of the Opposite Party is that the cancellation charges are not flat rate charges but proportional to the time invested and distance travelled by the driver-partner in reaching the customer-rider's location. It is also contended that the cancellation charges are not retained by the O.P but passed on to the driver-partner to reimburse them for the distance travelled and time invested by them for reaching the customer-rider's location. So, it all depends on the Information sharing terms and conditions between the Opposite Party and the drivers-independent contracts who are actually providing the transportation services. The cancellation criteria depends on the decision of the driver-partner and

District Commission-1, Hyderabad

Prasanna

economic feasibility based on his information about the pick-up point address, the distance and predicted travel time between their location and the pick-up point and the final destination. Whatever is the dynamics and the business-logistics between the Opposite Party and the drivers-partners/independent contractors, the cancellation that is done by the other side and the consequential costs thereof cannot be attributable to the consumer. As per the g-mails under Ex A-1 dt.21/7/2021 and 8/8/2021, the cancellation charges are Rs.27.44/- and Rs.37.45/- respectively. It is also mentioned that the ride is cancelled while the request is accepted at 7.22 PM and request cancelled at 5.30 AM in the first instance on 21/7/2021 and that the ride is cancelled with request accepted at 3.40PM and request cancelled at 5.30 AM in the second instance i.e. on 8/8/2021. In both the messages/e-mails, the request is accepted and request is cancelled after the rider grace period which is 180 seconds from the time the ride has been accepted by the driver-partner. From the messages, " Request accepted" and "Request cancelled", it can be fairly deciphered that the customer's request is accepted for pick-up and subsequently the customer's request is cancelled, and by no stretch of imagination can it be meant that the said cancellation is attributable to the customer/rider-complainant herein. Thus, the complainant has been charged for cancellation not done by him, causing not only last minute inconvenience but burdened with the cancellation charges adding up to his next trip fare. That there is no transparency in the cancellation criteria is evident from the partial information details available in the message/e-mail sent to the customer/complainant herein. The Opposite Party, being the intermediary, providing the interactive online platform, cannot be termed as a passive entity in the supply-chain, instead as a service provider, it pro-actively optimizes and facilitates transactions between the users and the service providers on its platform. As per the Consumer Protection(E-Commerce) Rules, there is an implied fall-back liability on the part of the e-commerce entities for any acts of omissions or commissions of the service providers on their platform and for any consequential loss/damage incurred by the end consumers.

Under the Limitation of Liability Clause in the terms and Conditions of the User Agreement under Ex B-2, it is mentioned that, "'uber's services may be used by you to request and schedule transportation, goods or logistics services with third party providers, but you agree that uber has no responsibility or liability to you related to any transportation, goods or logistics services provided to you by third party providers other than as

District Commission-1, Hyderabad

expressly set forth in these terms." And further goes on to add that, "the limitations and disclaimer in this section 5 do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable law." Clearly, it protects the larger interests of the consumers irrespective of the contractual obligations between the Opposite Party and its third party service providers/drivers-partners and cannot unreasonably burden the consumers with their operational costs, which not only amounts to unfair trade practice but in violation of the law.

Every service provider, while disseminating information related to charges inter-alia is required to ensure that:- (a) it is transparent and non misleading; (b) correct/accurate information is disclosed which is likely to influence the decision of a subscriber/user in an unambiguous manner. The Opposite Party is charging the customer/complainant herein cancellation charges irrespective of the fact whether the ride is cancelled by the customer or the driver-partner, is not only an unfair trade practice but speaks about price non-transparency and ensuing discrepancy and hence an unfair trade practice. Hence this point is answered in favour of the complainant.

7. Point No.2:-

As opined by Lord Wright in Fairbairn v. Fairbairn 1943 AC 32 "..... any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep." Hence, the Opposite Party, irrespective of their contractual agreement with the third party service providers, and whether with the consent, connivance of, or whether to be attributable to the third-party service providers/drivers-partners, the Opposite Party is liable to compensate the customer/complainant, for wrongful gain by collecting Rs. Rs.27.44/- and Rs.37.45/- towards cancellation charges under Ex A-1 dt.21/7/2021 and 8/8/2021, apparently request being cancelled after the rider grace period by the other side.

As the present complaint is not filed in a representative capacity to be treated as a class-action suit under Section 35(1)(c) of the Consumer Protection Act, 2019 (CPA), the relief sought for refund to all its users from whom cancellation fee was collected across India from 23/7/2020(date of notification of Consumer Protection (E-Commerce) Rules 2020 till date, cannot be granted, but the Opposite Party is directed to maintain

Prasanna

transparency in the information about cancellation criteria and also to restrain from collecting cancellation charges whenever the Opposite Party cancels the trip unilaterally for any reason from their side, in accordance with the Consumer Protection (E-Commerce Rules, 2020 and the Motor Vehicle Aggregator Guidelines-2020.

In view of the above findings, the complaint is allowed in part and the Opposite Party is directed to refund Rs.27.44/- and Rs.37.45/- to the complainant which were wrongly collected towards cancellation charges under Ex A-1 dt.21/7/2021 and 8/8/2021.

This order be complied with by the opposite party, within 45 days from the date of receipt of the order, failing which the above mentioned amounts shall carry interest @18% per annum from the date of this order till actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 25th day of April, 2022.

MEMBER PRESIDENT

APPENDIX OF EVIDENCE
WITNESS EXAMINED
NIL

Exhibits filed on behalf of the Complainant:

Ex.A1 –	Copy of UBER ride cancellation policy taken from UBER website & cancellation chargers levied.
Ex.A2 –	Copy of Consumer Protection (E-Commerce) Rules, 2020 notified by Government of India on 23rd July, 2020.
Ex.A3 –	Copy of Motor Vehicle Aggregators Guidelines -2020 dt 27.11.2020 issued by Ministry of Road Transport and Highways Government of India.

Exhibits filed on behalf of the Opposite party :

Ex.B1 –	Copy of Certified True copy of the Resolution passed at the meeting of the Board of Directors of UBER India System Pvt Limited dt. 28.09.2021
Ex.B2 –	Copy of Terms and conditions dt 05.10.2019.

MEMBER PRESIDENT

GOVERNMENT OF TELANGANA
District Consumer Disputes
Redressal Commission-1, Hyderabad
Order Pronounced on: 25/04/2022
Order Made Ready on: 26/04/2022
Order Delivered to the Complainant on: 26/04/2022
Order Delivered to the Opposite Party on: 27/04/2022

Dis No. 366
Dt: 26/4/22

SUPERINTENDENT 26/4/2022