



The Federation of Hotel & Restaurant Associations of India

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FH/1/SC/2017
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Mr. G.C. Rout
Deputy Secretary (CPU)
Department of Consumer Affairs
Ministry of Consumer Affairs, Food and Public Distribution,
Room No. 461, Krishi Bhavan,
New Delhi - 110001

Sub: Press Note issued by the Ministry dt. 2.1.2017 - "Restaurants billing 'service charges' in addition to taxes is optional"

Dear Sir,

Wishing you a Very Happy and Prosperous New Year!

1. We would like to introduce ourselves as the apex body representing the hospitality industry in the country since 1955. FHRAI has been registered as a not-for profit company under the Companies Act.
2. Our attention has been invited to the subject-mentioned press note and in response there to we would like to place the following points for your consideration:
3. We are making this representation to clarify that service charge is very much lawful, and there is nothing illegal about it. We neither approve nor disapprove of the practice of including a service charge as part of the bill. Each establishment is free to evolve its own policy in this regard.

About Service Charge:

4. Service charge, colloquially known as "tip", is the amount paid to the staff of the restaurant or other similar establishment by the customer/guest of the restaurant.
5. In some instances, the establishment may choose to include this amount in the bill itself, and the percentage may vary from 5% to 15% of the value billed.
6. This is a common and accepted practice in India as well as several other countries.

7. It is a charge like any other, and it is up to the establishment to decide whether and how much to charge in the bill. A restaurant/ hotel may just as easily absorb the said service charge into the remaining charges being collected by it from the customer (by simply including it in the prices on the menu). Service Charge is considered a beneficial payment since it is meant for the benefit of the staff of the establishment. So, some establishments make a conscious choice to adopt a beneficial policy towards its staff members by assuring them a minimum tip which is a percentage of the rest of the charges.
8. Since it is a socio-economic measure, the rationale behind putting it in the bill as a separate charge is also to clearly disclose to the customers that a specified portion of the amount paid by them is being given to the staff of the establishment that has been serving the customer.

Not an unfair Trade Practice


9. Contractually, a restaurant/hotel holds out an invitation to an offer/proposal to a potential guest/customer through its menu card. If such person chooses to avail of the services of the restaurant, when he places his order, such person in turn makes an offer to the establishment. The establishment then accepts his offer (order), which results in a concluded contract. When a customer chooses to avail of the hospitality of a restaurant, he does so on the terms and conditions on offer by the establishment. A service charge, like any other charge collected by an establishment, is a part of the invitation to offer by the restaurant to the potential customers. It is for the customers to decide whether they wish to patronise the said restaurant or not.
10. We have also been clearly advising our members that in the event they choose to collect service charges on behalf of their staff by including it in the bill presented to the customer, they must state the same clearly on their menu itself, or in some other prominent place on their premises.
11. We have carefully gone through the definition of an “unfair trade practice” [Section 2(1)(r)] in the Consumer Protection Act, 1986 and there is absolutely nothing in the said provision that would include the practice of collecting a service charge. It is neither unfair, nor deceptive, and nor is it meant to promote sale, use or supply or any goods; nor provision of any service.
12. The service charge is disclosed in advance and the same is clearly included as a separate heading in the bill as a “charge”, not a “tax”. Thus, there is completely transparency with regard to the amount, the rate and the purpose of the charge.
13. In fact this practice of collecting a service charge was specifically challenged under the Consumer Protection Act, 1986 and it has been upheld by the National Consumer Disputes Redressal Commission, in the decision of *Nitin Mittal vs. Pind Baluchi*, (2012) NCDRC 444. (**Annex. A**)
14. Further this practice of including “service charge” in the bill has also been specifically acknowledged by the Hon’ble Supreme Court way back in 1976 in *Rambagh Palace Hotel vs. Hotel Workers’ Union* (1976) 4 SCC 817 (**Annex. B**), as well as more recently on 3.12.2007 in the case of *Quality Inn Souther Star vs. Regional Director, ESI* (C.A.

No. 1250/2001) (**Annex. C**). This practice has also been noted by the Hon'ble Delhi High Court [*Income Tax vs. ITC Ltd.*, (2011) 338 ITR 598] (**Annex. D**) and the Income Tax Appellate Tribunal [*Rajinder Kumar Jain vs. ACIT, New Delhi*, Order dt. 24.2.2015 in ITA Nos. 328-329. Del./2013] (**Annex. E**) in the context of the Income Tax Act, 1961.

15. It may also be mentioned that, two years ago, the Competition Commission of India (CCI) had sought certain information on the subject of "service charge" from this Association by way of communication dt. 2.1.2015 (**Annex. F**), which was duly replied to by this Association vide its communication dt. 27.1.2015 (**Annex. G**). No further communication has been received by CCI and it appears that CCI has, rightly, dropped the matter.
16. Being the apex body representing the hotel and restaurant's FHRAI has not issued any clarification as mentioned in your Press Note stating that paying of service charges are voluntary by the guest and "should a customer be dissatisfied with the dining experience he/she can have it waived off."
17. Thus, in view of all that is state above, we request you to kindly withdraw the subject-mentioned press note as there is nothing illegal or unlawful, much less unfair in an establishment collecting a service charge from its guests.
18. The subject-mentioned press-note is likely to create unnecessary chaos and disruption of smooth functioning of restaurants across the country, as well as expose restaurants to unnecessary litigation before the Consumer Fora, whereas the highest Consumer forum i.e. the National Consumer Disputes Redressal Commission, New Delhi has already upheld the practice of levying "service charge", recognizing the contractual position that a restaurant holds out a proposal, and it is up to the customer whether he wishes to accept the proposal at the prices proposed by the restaurant. [ref. para 4 of Annex A]
19. We shall be grateful if you could issue a clarification to your Press Release putting the facts in the correct perspective. If you require any further or other information /documents from our side, we will furnish the same.
20. Please give us some time, as per your convenience so that we can meet you and discuss the matter in person.

Thanking you,

Yours faithfully,


Amitabh Devendra
Secretary General