

Raja Harpal Singh vs Bata Shoe Store on 5 November, 2024

RP/19/2023

D.O.D.: 05.11.2024

MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 10.04.2023

Date of Hearing: 04.10.2024

Date of Decision: 05.11.2024

REVISION PETITION NO.- 19/2023

IN THE MATTER OF

MR. RAJA HARPAL SINGH
S/O MR. AMRIK SINGH LYALLPURI
R/O 1590, MADRASA ROAD
KASHMERI GATE, DELHI.

...Revisionist in person

VERSUS

1. BATA SHOE STORE
116-E, GROUND FLOOR
KAMLA NAGAR, DELHI-110007

2. BATA INDIA LIMITED
02, MEHRAULI GURGAON ROAD
SOUTH CITY-I SECTOR 17, GURUGRAM
(HARYANA) -122001

(Through: Mr. Neeraj Grover & Mr. Kashish Sethi, Advocates)

... Respondents

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CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Revisionist in person.

Mr. Neeraj Grover, counsel for the respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are:

"The complainant on 12.02.2023 visited the M/s Bata Shoe Store (hereinafter OP-1) at Kamla Nagar, Delhi, which is the outlet of M/s Bata India Limited (hereinafter OP-2). The complainant purchased two pairs of ladies' footwear from the opposite party No.1 vide invoice no.CM3952220017446 and paid Rs.2904/-. The said price is inclusive of additional payment of Rs.6/- with taxes for paper carry bag as he was not carrying his own carry bag and the OP.1 has failed to provide card board boxes to carry the footwear. The Complainant has also alleged that during purchase, OP-1 has refused to give benefit of the redemption of 100 points which was expiring on 12.02.2023. Charging for the paper carry bag by OP-1 store, according to the Complainant, is unfair trade practice and the Complainant has claimed relief for such practice and prayed for refund of Rs. 6/- along with taxes for paper carry bag and also give direction to the opposite parties to give benefit of redemption of 100 points and also to pay Rs. 1,00,000/- towards damages/ compensation on DISMISSED PAGE 2 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED account of harassment mental pain and agony and further Rs.20000/- towards litigation charges."

2. The District Commission after taking into consideration the material available on record passed order dated 17.03.2023, whereby it held as under:

"At the onset, we would like to produce the prayers as claimed by the Complainant, which read as under:

"It is, therefore most respectfully prayed that this Hon'ble Forum may kindly be pleased to refund of Rs. 6/- along with taxes for paper carry bag and also give direction to the opposite parties to give benefit of redemption of 100 points and also to pay Rs. 1,00,000/- towards damages/ compensation on account of harassment mental pain and agony and further Rs 20000/- towards litigation charges. Any other relief which this hon'ble forum deems fit and proper be also granted to the complainant."

4.This Commission does not have powers to grant such relief, which has been sought in the underlined part above, to the Complainant as Section 39 of the CPA 2019 does not empower this Commission to grant such relief. The Complainant has not sought refund of the price so charged for the paper carry bag the OPs but from this Commission, which is highly inappropriate. Subsequent prayers are consequential reliefs if the complaint is proved against the OPs. In view of the fact that the Complainant has not sought refund of the charged price of the paper carry bag from the OPs, subsequent prayers can also not be granted.

5. In the complaint, the Complainant has made following allegations against the OP-1:

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(i) The store executive at the billing counter at OP-1 store charged for the paper carry bag in the invoice.

(ii) The store Manager did not give benefit of the redemption of points which was expiring on 12.02.2023.

(iii) the OP-1 has failed to provide cardboard boxes to carry footwear, therefore the Complainant was forced to pay additional charges for paper carry bag.

6. In support of his complaint, the Complainant has stated in the complaint and also argued that not providing free carry bag to carry purchased items to the complainant by OP-1 store is deficiency as defined in section 2 (11) of the Consumer Protection Act, 2019 (hereinafter CPA, 2019). According to the Complainant, "charging inflated amount" and "not providing any alternative to carry goods purchased from the store" are deficiency as defined section 2 (11) of the CPA, 2019.

Section 2 (11) of the CPA, 2019 reads as under:

"2. Definitions. In this Act, unless the context otherwise requires, - (11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes-

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

(i) deliberate withholding of relevant information-by such person to the consumer".

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7. There are two tests in this provision to decide deficiency by the service provider- first that the service provider is not performing as required by or under the provisions of any law in force, and second, failure to perform in compliance of agreed terms of contract.

Deficiency also includes negligence or omissions or commissions that cause loss or injury to the consumer; and deliberate withholding of information from the consumer.

8. In the case in hand, charging for the paper carry bag is neither prohibited under any law and nor does it fall within the parameter of non-adherence of agreed terms of contract between the service provider and Consumer. It is not the case of the Complainant that the price of the paper Carry bag was neither printed nor displayed anywhere at the store. As a matter of fact, the paper carry bag has a printed Maximum Retail Price (MRP) on it which is seen at the bottom of the carry bag which has been annexed as an annexure with the complaint. Once the price is printed on the paper carry bag, it becomes an independent item to be sold at the store.

9. The Complainant has also alleged that the OPs are charging for the paper carry bag, but the same should be provided free of cost. The Complainant has not explained that under which law, the OPs are supposed to provide carry bags free of cost. There is no law that requires the shopkeepers to provide carry bags for free. The carry bag in question has been sold as a separate item at a price printed on it. In India, manufacturers and sellers are required to print the Maximum Retail Price (MRP) which should also include all taxes. Unfortunately, there is no law that governs the upper limit of the price that can be fixed as MRP, and the manufacturers/retailers are DISMISSED PAGE 5 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED permitted to print any amount as MRP. Under the relevant laws, the seller cannot charge any amount higher than the MRP and the printed MRP can also not be altered. In the case in hand, the MRP of the carry bag is printed which is not altered. The OP-1 store has charged for the Paper Carry Bag at MRP. Complainant has also not challenged the fixing of MRP and has only alleged that such carry bag must be given free of cost, without giving any legal requirement in support of his claim/allegations. It is also not the case of the Complainant that OP is charging the price higher than the printed MRP. In such a situation, we cannot accept the allegation of the Complainant that charging for the paper carry bag by the OPs is deficiency of service.

10. In the order passed by Hon'ble National Commission in the matter of Big Bazaar vs Sahil Dawal (NCDRC, RP No. 975/2020, Decided on 22/12/2020), by which Hon'ble National Commission has upheld the orders passed by the District Forum-I, U.T. Chandigarh has observed, inter alia, as under:

"13. The consumer has the right to know, before he exercises his choice to patronize a particular retail outlet, and before he makes his selection of goods for purchase, that

additional cost will be charged for carry bags, and also the right to know the salient specifications and price of the carry bags. Prominent prior notice and information has necessarily to be there (inter alia at the entrance to the retail outlet also), to enable the consumer to make his choice of whether or not to patronize the concerned outlet, and the consumer has necessarily to be informed of the additional cost for carry bags and of their salient specifications and price before he makes his selection of the goods for purchase.

It may be noted that carry bags, sold at a particular price to the consumer, are in themselves 'goods', and, as such, are themselves, too, within the ambit of the statute for "better protection of the interests of consumers". It cannot be that the said goods (i.e. the carry bags) are imposed on the consumer, without disclosing their salient specifications, at the price fixed by the Opposite Party Co., without prior notice or information that (additional) cost will be charged for them.

In the instant case, arbitrarily and highhandedly deviating from its past practice, deviating from the normal, not giving adequate prominent prior notice or information to the consumer before he makes his choice of patronizing the retail outlet, and before he makes his selection for purchase, imposing additional cost of carry bags at the time of making payment, after the selection has been made, forcing carry bags without disclosing their salient specifications at price as fixed by the Opposite Party Co., putting the consumer to embarrassment and harassment, burdening the, consumer with additional cost, in such way and manner, is decidedly unfair and deceptive.

14. As matter of Consumer Rights, the consumer has the right to know that there will be. an additional cost for carry bags (the same being deviation from the normal wont in retail outlets in general), and also to know the salient specifications and price of the carry bags, before he exercises his choice of Patronizing a particular retail outlet and before he makes his selection of goods for purchase from the said retail outlet.

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15. The Opposite Party Co. through its Chief Executive Is ordered under Section 39(1)(g) of the Act 2019 [corresponding Section 14(1)(f) of the Act 1986] to forthwith discontinue its unfair trade practice of arbitrarily and highhandedly imposing additional cost of carry bags on the consumer at the time of making payment, without prominent prior notice and information before the consumer makes his choice of patronizing its retail outlets and before the consumer makes his selection of goods for purchase, as also without disclosing the salient specifications

and price of the carry bags. The necessary notice / signs /announcement / advertisement /warning should be in the place and manner as may enable the consumer to make his informed choice of whether or not to patronize its retail outlets, and whether or not to make his selection of goods for purchase from its retail outlets. The notice or information cannot be at the occasion of making payment, after the consumer has exercised his choice to patronize its retail outlet, and after he has made his selection of goods for purchase."

11. In the Big Bazaar case (supra), Hon'ble National Commission has held that that carry bag is covered under the definition of the "good" as defined in section 2 (21) of the CPA 2019. Hon'ble National Commission also held that the store cannot charge for carry bag without prominent prior notice and information before the consumer makes his choice of patronizing its retail outlets and before the consumer makes his selection of goods for purchase, as also without disclosing the salient specifications and price of the carry bags. In the case in hand, it is not the case of the Complainant that the store did not have any notice at prominent places in the store DISMISSED PAGE 8 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED before the Complainant decided to make selection for his goods to be purchased. Further the paper carry bag that has been annexed with the complaint clearly indicates that all required and relevant specifications are well placed along with the MRP so displayed at the carry bag. The specifications as available at the bottom side of the paper carry bag, as printed, are as under:

12. The above declaration as available on the paper carry bag indicates, apart from the MRP, the bar code, Article number, Name of the product i.e. Carry Bag- Plain, details of the manufacturer and date of manufacturing and contact details for consumer complaints. All this information are relevant as mandated in the judgment passed by Hon'ble National Commission in Big Bazaar case (supra).

13. Further, we would like to refer to section 2 (21) of the CPA, 2019 which defines "goods" in following terms:

"2. Definitions. In this Act, unless the context otherwise requires,

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"goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;"

14. The definition of the term "goods" is very wide and it covers all movable property in its ambit. The paper carry bag is also a movable property and is also covered under this definition. Further, every good is required to have its price printed on it and it is the right of the consumer to know the

price of every good. In this context, the definition of term "Consumer rights" as in section 2 (9) of the CPA, 2019 needs to be reproduced, which is as under:

"2. Definitions. In this 'Act, unless the context otherwise requires, -

(9) "consumer rights" includes, -

(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property:

(ii) the right to be informed about the quality, quantity potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;

(iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;

(iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;

(v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and

(vi) the right to consumer awareness;" (underlining by us) DISMISSED PAGE 10 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED

15. The definition of term "consumer rights" clearly indicates that the consumer has a right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, So as to protect the consumer against unfair trade practices. All the cases before Hon'ble National Commission including the Big Bazaar case (supra) are cases originally filed under Consumer Protection Act, 1986 which did not specifically recognise any of these consumer rights which are part of section 2 (9) of the CPA, 2019. Further, the required and relevant specifications and the MRP as printed on back of the paper bag of the OP-2 Company is in complete recognition of consumer rights as available in section 2 (9) of the CPA, 2019.

16. The Complainant has also relied on section 2(46) (vi) of the CPA 2019 to argue that the OPs are imposing unreasonable charge on the consumer, which is putting the consumer on a disadvantageous position. Section 2 (46) of the CPA 2019 deals with unfair contract and reads and under:

"2. Definitions. In this Act, unless the context otherwise Requires:-

(46) "unfair contract" means 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

(i) imposing any penalty on the consumer, for the breach of contract hereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or DISMISSED PAGE 11 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED

(ii) 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;"

17. In the case in hand, there is no contract between the Complainant and the OPs and the terms and conditions of such contracts are not placed on records, if there is any. Out of place reliance of just one sub-clause of section 2 (46) CPA 2019 is not correct application of law. The said sub-clause is with respect to the contract between the parties, but in the case in hand, there is no explicit or implicit contract implying that the paper bag is chargeable or not. Further, even assuming that there is any contract, which is unfair in nature, the terms of contract can only be challenged before Hon'ble State Commission under Section 47 (a) (1) of CPA, 2019 or before Hon'ble National Commission under section 58 (a) (i) of CPA, 2019. District Commissions are not empowered under section 34 of the CPA, 2019 to hear any complaints where the unfair contract is under challenge. In the case in hand, the Complainant has not challenged any unfair contract, but has only filled on just one sub-clause of section 2 (46) of CPA, 2019 which is simply out of place.

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18. The Complainant has also alleged that the OPS have not provided the cardboard packaging of the shoes so purchased by the Complainant herein and in absence of such cardboard packaging, the Complainant was forced to purchase the paper carry bag. In this context, we would like to refer to Legal Metrology Act, 2009 and The Legal Metrology (Packaged Commodities) Rules, 2011. The said Act and Rules do not mandate compulsory packaging of the shoes before selling. Therefore, even if

the allegation of the Complainant that the OPs did not provide the card board packaging of the shows, the same cannot be seen as a unfair trade practice or deficiency of service as the law does not mandate compulsory packaging of the shoes.

19. On the issue of not giving benefit of the redemption points, we note that the annexure filed by the Complainant indicate that 100 points were expiring on 12-Feb and the Complainant was supposed to redeem the said points before such date. The text of the message reads as under:

"Dear Member, ur 100 points will expire on _12-Feb. Redeem at nearest Bata store or <http://nc3.in/bQyYC1x> before expiry. Tnc. Optout call 7798811887"

20. The above message clearly indicates that 100 points would expire on 12-Feb and for redemption of the expiring points, the Complainant was supposed to visit the Bata Store or the website before such date, which means, on or before 11 th February. In the case in hand, the Complainant admittedly made purchases on 12 th February and on such date the 100 redemption points has already expired. Mence, by not giving the benefit of the redemption points by the OP-1, in our opinion, there was no deficiency of service.

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21. At this stage, we also see I that the Complainant has sought the compensation of Rs. 1,00,000/- on account of harassment, mental pain and agony and Rs. 20,000/- as litigation charges. The Complainant has not filed any document to show that he has incurred any cost for fling this complaint. He has also not justified his litigation expenses by fling any payment receipts for his payments to any of his lawyers, if any. For harassment, mental pain and agony, except for the argument that the said amount is payable on account of charging of additional price for paper carry bag and refusal to give benefit of 100 points by the OPs, there is no other specific averments or proof of exact injury or harm inflicted upon the Complainant. The allegation of harm and mental agony is very vague and not specific. It is a settled law that the Complainant filed under CPA 2019, is meant for saving consumer from being exploited and it is not meant for windfall or making purchaser millionaire overnight. CPA, 2019 is a welfare registration and is not meant to be a tool to wrong gains. The compensation sought by the Complainant is dis- appropriately high and the Complainant has not given any proper justification for the same, In our opinion, prayer for high compensation and cost without proper justification by the Complainant herein is not correct and is to be discouraged. For this, reliance is placed on the judgment of Hon'ble National Commission in the matter of Dr. Uttam Kumar Samanta vs. Vodafone East Limited [FA 847/2017 decided on 05.10.2018]. However, as the Complainant is a senior citizen, we are refraining from passing any adverse order on this aspect against the Complainant.

22. For the reasons explained above, we do not find any merit in the case. Hence the complaint is dismissed being devoid of merit."

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3. Aggrieved by the order of the District Commission, the Revisionist has filed the present revision petition on the ground that the District Commission passed its order without issuing a notice to the Respondents but the present case is only refund of the carry bag charges only. However, the District Commission passed the said impugned order in a hurry manner and support the version of the Respondent without serving notice upon the Respondents. He further submitted that the District Commission dismissed the complaint on merits without thoroughly considering the facts and arguments presented, particularly regarding the charge for a paper carry bag, which they argue is an unfair trade practice.

4. The Revisionist submitted that it is the seller's responsibility under Section 36(5) of the Sale of Goods Act, 1930, to provide goods in a deliverable state, and charging customers for a carry bag constitutes an unfair trade practice. In support, the Revisionist cited legal precedents such as Bata India Ltd. vs. Dinesh Prasad and Big Bazaar vs. Sahil Dawar, where consumer forums have held that sellers must provide carry bags free of charge to avoid unfair practices. The Revisionist also submitted that the Respondent did not provide a cardboard box for the purchased footwear, thus compelling the Complainant to pay for a carry bag--an act the Revisionist claims to be both unethical and unfair.

5. The Revisionist further submitted that sellers should provide goods in a manner that protects them from damage. The Revisionist prayed for the impugned order to be set aside, raising several legal grounds, including procedural irregularities, misappreciation of facts and law, and the District Forum's failure to apply established consumer law principles.

6. On the other hand, the Respondent submitted that the impugned order contains no legal or factual flaws. The Respondent further denied the Revisionist's allegations in their entirety and submitted that the present DISMISSED PAGE 15 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED revision petition be dismissed as false, frivolous, misconceived, and without merit, while also seeking exemplary costs to be imposed on the Revisionist.

7. We have perused the Revision, Reply of the Respondents, written arguments of both the parties and Impugned Order.

8. The main question for consideration before us is whether the impugned order dated 17.03.2023 passed by the District Commission, is suffering from any infirmity?

9. To deal with the present issue, we deem it appropriate to refer to Section 47 (1)(b) of the Consumer Protection Act, 2019 reproduced hereunder as:

"(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity."

10. A perusal of the aforesaid statutory position makes it clear that the State Commission can entertain a revision petition in cases where the District Commission has acted extra-judicially or the District Commission has failed to exercise the jurisdiction vested in it by law or has acted in exercise of its jurisdiction illegally or with material irregularity.

11. In the present case, the main grievance of the Revisionist is with respect to carry bag charges taken by the Opposite Party. It is noted in the present case that the price of the paper bag is printed at the bottom of the carry bag and once the price is printed on the paper carry bag, it becomes an independent item to be sold at the store.

12. To support our observation, we also rely on the case of Big Bazaar Vs. Sahil Dawal (NCDRC, RP no. 975/2020 decide on 22.12.2020), wherein it was DISMISSED PAGE 16 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH VS. BATA SHOE STORE & BATA INDIA LIMITED held by the Hon'ble NCDRC that the store cannot charge for carry bag without prominent prior notice and information before the consumer makes his choice of patronizing its retail outlets and before the consumer makes his selection of goods for purchase, as also without disclosing the salient specifications and price of the carry bags. In the present case, the paper carry bag provided by the Opposite Party complies with the requirements outlined in the aforesaid judgment, as it displays not only the MRP but also includes additional details such as the bar code, article number, product name, manufacturing details, date of manufacture, and contact information for consumer complaints. Therefore, these disclosures ensure that the consumer is fully informed regarding the carry bag, fulfilling both transparency and legal obligations.

13. Further, the Revisionist's contention that the carry bag should be provided by the Opposite Party free of cost is unsupported by any prevailing law. No statute currently mandates the provision of a carry bag without charge. Moreover, we are in with agreement of the District Commission that the Legal Metrology Act, 2009 and The Legal Metrology (Packaged Commodities) Rules, 2011 does not impose an obligation on sellers to provide cardboard packaging for shoes prior to sale. Thus, even assuming the Revisionist's allegation that the Opposite Party failed to provide cardboard packaging is correct, this omission cannot constitute an unfair trade practice or deficiency in service, as the law does not require mandatory packaging of shoes. Accordingly, we are of the considered view that the submissions made by the Revisionist holds no merit.

14. Consequently, in light of the aforesaid discussion, we find no reason to interfere with the order dated 17.03.2023 passed by the District Consumer Disputes Redressal Commission-I (North District), GNCT, Delhi-110006 in Consumer Complaint No. 37 of 2023, titled as Raja Harpal Singh Vs. Bata DISMISSED PAGE 17 OF 18 RP/19/2023 D.O.D.: 05.11.2024 MR. RAJA HARPAL SINGH

VS. BATA SHOE STORE & BATA INDIA LIMITED Shoe Store & Bata India Limited. Consequently, the Revision Petition No. 19/2023 stands dismissed with no order as to costs.

15. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

16. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

17. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL) PRESIDENT (PINKI) MEMBER (JUDICIAL)
Pronounced On:

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