

Laxmi Engineering Works vs P.S.G. Industrial Institute on 4 April, 1995

Equivalent citations: 1995 AIR 1428, 1995 SCC (3) 583, AIR 1995 SUPREME COURT 1428, 1995 AIR SCW 2114, (1995) 2 LS 1, 1995 (3) SCC 583, (1995) 3 SCR 174 (SC), (1995) 2 CPR 11, 1996 BRLJ 34, (1995) 84 COMCAS 121, (1995) 2 COMLJ 393, (1995) 2 CURLJ(CCR) 301, (1995) 2 CIVLJ 361, (1995) 2 CPJ 1, (1995) 3 JT 433 (SC), (1995) 3 BOM CR 3

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy

PETITIONER:
LAXMI ENGINEERING WORKS

Vs.

RESPONDENT:
P.S.G. INDUSTRIAL INSTITUTE

DATE OF JUDGMENT 04/04/1995

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 1428 1995 SCC (3) 583
JT 1995 (3) 433 1995 SCALE (2) 626

ACT:

HEADNOTE:

JUDGMENT:

B.P.JEEVAN REDDY, J.:

1. Leave granted. Heard counsel for both the parties.

2. The definition of the expression " consumer" in clause

(d) of Section 2 of the Consumer Protection Act, 1986 ex-

cludes from its purview "a person who obtains such goods for resale or for any commercial purpose". The question that arises in this appeal is what is the meaning and ambit of the expression "any commercial purpose" in the said definition. By Ordinance 24 of 1993 (which has since been replaced by Amendment Act 50 of 1993) an explanation has been added to the definition of the expression "consumer" with effect from 18.6.1993. The explanation reads: "For the purposes of sub-

clause (i) "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self- employment". The complaint herein was, however, made before the adding of the said explanation. It would be appropriate to read the definition at this stage.

"(d) "consumer" means any person who,-

(i) buys any goods, for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for resale or for any commercial purpose;or

(ii)[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person: "

THE FACTUAL MATRIX:

3. The appellant, Laxmi Engineering Works, is a proprietary concern established under the Employment Promotion Programme. It is registered as a small scale industry with the Directorate of Industries, Maharashtra and has also obtained financial assistance from Maharashtra State Finance Corporation in the form of term loan amounting to Rs.22. 10 lakhs besides financial assistance from certain other sources. The appellant placed an order with the respondent-P.S.G. industrial institute for supply of PSG 450 CNC Universal Turing Central Machine on May 28, 1990. The appellant's case is that the respondent not only supplied the machinery six months beyond the stipulated date but supplied a defective machine. Soon after it was installed and operated, several defects came to light which the appellant brought to the notice of the respondent. A good amount of correspondence took place between

the parties and though the respondent sent some persons to rectify the de-

fects, the machine could not be put in proper order. The appellant states that he was suffering serious financial loss on account of the defective functioning of the machine and accordingly he lodged a complaint (No. 116 of 1992) before the Maharashtra Consumer Disputes Redressal Commission claiming an amount of Rs.4,00,000/- on several courts from the respondent. The respondent appeared before the State Commission and denied the appellant's claim. Inter alia, it raised an objection that since the appellant has purchased the machine for commercial purposes he is not a consumer within the meaning of the said expression as defined in Section 2(d) of the Act. The commission allowed the appellant's claim partly, directing the respondent to pay to the appellant a sum of Rs.2.48 lakhs within 30 days failing which the said amount was to carry interest at the rate of 18% per annum. The respondent filed an appeal before the National Commission which allowed the said appeal on 7th December, 1993 on the only ground that the appellant is not a "consumer" as defined by the Act. The National Commission observed:

"(F)rom the facts appearing on record it is manifest that the complainant is carrying on the business of manufacture of machine parts on a large scale for the purpose of earning profit and significantly one single item of machinery in respect of which the complaint petition was filed by him before the State Commission itself is of the value of Rs. 21 lakhs and odd. In the circumstances, we fail to see how the conclusion can be escaped that the machinery, in question which is alleged to be defective was purchased for a commercial purpose. Hence, the complainant is not entitled to be regarded as a consumer and the complaint petition filed by him was not maintainable before the State Commission. He order passed by the State Commission is set aside. The complaint petition is dismissed." The National Commission, however, observed that their order does not preclude the appellant from pursuing his remedy by way of ordinary civil suit.

4. The learned counsel for the appellant submits that the purpose for which the appellant has purchased the said machine cannot be called a "commercial purpose" and that the appellant cannot certainly be said to be carrying on business of manufacture of machine parts "on a large scale"

for the purpose of earning profit. Learned counsel pointed out that appellant is a small scale industry and the said machine was purchased by him for the purpose of earning livelihood. Learned counsel submitted that the appellant is a proprietary concern of Shri Y.G.Joshi, who is a diploma holder in engineering and who proposed to start a small scale industry with financial assistance from public financial institutions to earn his livelihood. The appellant had entered into an agreement with Premier Automobiles for supplying certain parts required for the manufacture of cars by the said concern. But for this, the appellant has no other business, it is pointed out. On the other hand, the learned counsel for the respondent submitted that the purpose for which the appellant purchased the said machine is undoubtedly a commercial purpose as held by the National Commission consistently over the last

several years.

THE ACT AND ITS SCHEME:

5. After good amount of consultations with governments and international organisations, the Secretary General of United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. After extensive discussions and negotiations among governments on the scope and content of the guidelines, the General Assembly of the United Nations adopted the guidelines for consumer protection by consensus on 9th April, 1985 [General Assembly Resolution NO.39/248]. The guidelines issued are placed under four heads, viz., objectives, general principles, guidelines and international co-operation. Para 1 under the head "objectives" bears reproduction. It reads:

"I OBJECTIVES

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous prod-

ucts, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

(a)To assist countries in achieving or maintaining adequate protection for their population as consumers;

(b)To facilitate production and distribution patterns responsive to the needs and desires of consumers;

(c)To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

(d)To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

(e)To facilitate the development of independent consumer groups;

(f)To further international co-operation in the field of consumer protection;

(g)To encourage the development of market conditions which provide consumers with greater choice at lower prices. "

6. Under the head 'guidelines' and under the sub- heading "E. Measures enabling consumers to obtain redress", the following guidelines are set out:

"E. Measures enabling consumers to obtain redress

28. Government should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant Organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low income consumers.

29. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

30. Information on available redress and other dispute-resolving procedures should be made available to consumers."

7. In the following year, i.e., 1986, our Parliament enacted the present Act. (The United Kingdom enacted the Consumer Protection Act in 1987.) The statement of objects and reasons appended to the Bill says that the Bill is intended to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for other matters connected therewith. Para 4 of the Statement of Objects and Reasons reads:

"4. To provide speedy and simple redressal to consumer disputes, a quasi judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non compliance of the orders given by the quasi-judicial bodies have also been provided."

8. The Preamble to the Act is practically on the same lines. It reads:

"An act to provide for the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. "

(emphasis added)

9. It is significant to notice that in the Statement of Objects and Reasons as well as in the Preamble, the new forums which the Act was setting up are referred to as quasi-judicial machinery" and as

"authorities" respectively but not as courts. The Act has created the dispute resolution authorities at District, State and National level called District Forum, State Commission and National Commission. Section 3 expressly states that "(T)he provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force." Chapter-III provides for "CONSUMER DISPUTES REDRESSAL AGENCIES." The use of the expression "agencies" is again significant. Section 9, which provides for establishment of forums at three levels, reads thus:

"9. Establishment of Consumer Disputes Redressal Agencies.-- There shall be established for the purposes of this Act- the following agencies. namely-

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government with the prior approval of the Central Government in each district of the State by notification:

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission"

established by the State Government with the prior approval of the Central Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification."

10. Section 13 prescribes the procedure to be followed by the District Forum on receipt of a complaint from a consumer involving value upto Rupees one lakh (after amendment in 1993, five lakhs). Inter alia it provides that the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of matters specified therein. Section 15 provides an appeal from the orders of the District Forum to the State Commission. Section 17 confers original jurisdiction also upon the State Commission in matters the value whereof exceeds Rupees one lakh but does not exceed Rupees ten lakhs (after amendment 5 lakhs and 20 lakhs respectively). Section 18 provides that the procedure of the State Commission shall be the same as that of the District Forum. Section 19 provides an appeal from the orders of the State Commission (made in exercise of its original jurisdiction) to the National Commission. Section 21 confers original jurisdiction upon the National Commission as well where the value of the complaint exceeds Rupees ten lakhs (after amendment in 1993, twenty lakhs). Section 24 declares that "(E)very order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final". (Section 23 provides an appeal to Supreme Court against the orders of National Commission passed in exercise of its original jurisdiction.) Section 25 provides that the orders of the District Forum, State Commission and National Commission shall be executed as if they are decrees or orders of a Court.

11. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi judicial tribunals

brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself, any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.

SECTION 2(d)(i) AND THE EXPLANATION ADDED BY 1993 AMENDMENT ACT:

12. Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means in so far as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration

(iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression "resale" is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. "Commercial" denotes "pertaining to commerce"

(Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale"

(Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a "consumer" within the meaning of Section 2(d)(i) of the Act. Broadly af-

firming the said view and more particularly with a view to obviate any confusion the expression "large-scale" is not a very precise expression the Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression "commercial purpose" - a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or

for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression "consumer". If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a "consumer". In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., "uses them by himself", "exclusively for the purpose of earning his livelihood" and "by means of self-employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasize what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer.) As against this a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be a consumer. This is the necessary limitation flowing from the expressions "used by him", and "by means of self-employment"

in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and clarified by the other two sets of words.

13. It is argued by the learned counsel for the appellant that such a narrow construction may not be warranted by the scheme and object of the enactment. He says that there may be a widow or an old or invalid man who may have no other means of livelihood and who purchases an auto-rickshaw or a car or other machinery to be plied or operated by another person either on payment of consideration on a daily, weekly or monthly basis or as a servant or agent. While there is certainly some logic in the said submission it cannot be accepted in view of the language of the explanation. We are also of the opinion that the definition of the expression "person" in Section 2(m) as including a firm (whether registered or not), a Hindu undivided family, a co-operative society or any other association of persons (whether registered under the Societies Registration Act, 1860 or not) makes no difference to the above interpretation. If a firm purchases the goods, the members of the firm should themselves ply, operate or use the goods purchased. Same would be the case of purchase by Hindu Undivided Family, cooperative society or any other association of persons. Reference in this behalf may be made to the definition of the expression "consumer" in Section 20(6) of the Consumer Protection Act, 1987 of United Kingdom. It reads thus:

who might wish to be supplied with the goods for his own private use or consumption;

(b) in relation to any services or facilities,

means any person who might wish to be provided with the services of facilities otherwise than for the purposes of any business of his; and

(c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his:"

14. This definition is undoubtedly narrower than the definition in our Act. The English Act requires that to be a consumer in relation to any goods, a person must put the goods for his own private use or consumption. Notwithstanding this difference in definition, the object of both the enactments appears to be the same, to protect the consumer from the exploitative and unfair practices of the trading and manufacturing bodies and to provide him with an easily accessible, inexpensive and speedy remedy for the wrong suffered by him.

THE NATURE AND POWERS OF THE AUTHORITIES CREATED BY THE ACT:

15. Having dealt with the meaning of the expression 'any commercial purpose' in Section 2(d) in the light of the scheme of the enactment, it may be necessary to append a clarification to obviate any confusion. Section 24 declares that "(E)very order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final". This Section has to be read along with sub-section (3) of Section 13. Section 13 prescribes the procedure to be followed by the District Forum on receipt of a complaint. Sub-section (3) of Section 13 says that "(N)o proceedings complying with the procedure laid down in sub-section (1) and (2) shall be called in question in any Court on the ground that the principles of natural justice have not been complied with." By virtue of Section 18 the procedure prescribed in Section 13 applies to State Commission as well. From the above provisions, it is clear that the orders of the District Forum, State Commission and National Commission are final as declared in Section 24 and cannot be questioned in a civil court. The Issues decided by the said authorities under the Act cannot be re-agitated in a civil court. The said provisions make it equally clear that the Forums created by the Act fall in the second category of Tribunals mentioned in *The Queen v. Commissioner for Special Purposes of the Income-tax*, (1888) 21 Q.B.D. 313 at P.319) which decision has been repeatedly affirmed and applied by this Court which means that the Forums/Commissions under the Act have jurisdiction to determine whether the complainant before them is a "consumer" and whether he has made out grounds for grant of relief Even if the Forum/Commission decides the said questions wrongly, their orders made following the procedure prescribed in sub-sections (1) and (2) of Section 13 cannot be questioned in a civil court - except of course, in situations pointed out in *Dhulabhai v. State of M.P.* (1968 (3) S.C.R. 662). They can and must be questioned, only in the manner provided by the Act.

THE EXPLANATION IS CLARIFICATORY:

16. Yet another clarification; the Explanation, in our opinion is only explanatory; it is more in the nature of a clarification a fact which would become evident if one examines the definition (minus the explanation) in the context and scheme of the enactment. As indicated earlier, the explanation broadly affirms the decisions of the National Commission. It merely makes explicit what was implicit in the Act. It is not a-, if the law is changed by the said explanation; it has been merely made clearer. RELEVANT DECISIONS:

17. In Lucknow Development Authority v. M.K. Gupta (1904 (1) SCC 243). the question was whether a public authority engaged in constructing and selling houses can be said to be rendering a Services and whether the person purchasing such houses can be called a "consumer" within the meaning of the said definition. While answering the question in the affirmative, a Bench of this court (Kuldip Singh and R.M.Sahai,JJ.) also examined the scheme and object of the Act and the ambit of the definition of the expression "consumer". The following observations are apposite:

"To begin with the preamble of the Act which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a pre- amble cannot control otherwise plain meaning of a provision. In fact, the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory..... The word 'consumer' is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. In Oxford Dictionary a consumer is defined as, "a purchaser of goods or services". In Black's Law Dictionary it is explained to mean, "one who consumes. Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies. financing practices, quality of goods and services, credit reporting. debt collection, and other trade practices for which State and Federal consumer Protection Laws are enacted. "

The Act opts for no less wider definition. It reads as under:

" consumer' means any person who, -

(i)buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose, or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment when such services are availed of with the approval of the first mentioned person;

[Explanation.-- For the purposes of subclause

(i), 'commercial purpose' does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]"

It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and

(g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services."

18. In *Morgan Stanley Mutual Fund v. Kartick Das* (1994 (4) SCC 225), a Bench of this Court (M.N.Venkatachaliah, CJ, S.Mohan and Dr.A.S.Anand, JJ.) stated the meaning of the expression "consumer" in the following words:

"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get that he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer. "

19. It must, however, be said that in both the above cases, the question arising herein was not in issue. In *Morgan Stanley*, the question was whether a prospective investor in the shares of a company is a "consumer" as defined in Section 2(f). It was held that he was not.

20. Reference to the decisions cited by the learned counsel for the parties would be in order at this stage. In *Synco Textiles Private Limited v. Greaves Colton and Co. Ltd.* (1991 (1) CPJ 499), the appellant purchased from the respondent three generating sets at a total cost of Rs.5,53,000/- for use in his factory. His case was that the generating sets supplied by the respondent-company were defective and that on that account he suffered substantial business losses. He applied to the State Commission for recovery of the cost of the machines as well as a sum of Rupees four lakhs by way of damages. The State Commission first took up the question whether the complainant can be called a "consumer" as defined in the Act. (The case arose before the explanation was added by the 1993 Amendment Act.) The State Commission held that since the generators were purchased by the appellant for generating electricity in its factory to be used for operating the machinery in the factory for the purpose of commercial production, the appellant cannot be called a "consumer". When the matter came to the National Commission by way of appeal, Balakrishna Eradi, J., President, dealt with the meaning of the words "for any commercial purpose" in the following words (majority opinion):

"Since cases of resale have been separately referred to, it becomes obvious that the words "for any commercial purpose" are intended to cover cases other than those of resale of the concerned goods. The words "for any commercial purpose" are wide enough to take in all cases where goods are purchased for being used in any activity directly intended to generate profit. According to the meaning given in standard dictionaries, the expression 'commercial' means-

"connected with, or engaged in commerce. mercantile; having profit as the main aim,, (See Collins English Dictionary). "Pertaining to commerce: mercantile" (See Chamber's Twentieth Century Dictionary) The of the expression 'commerce' as given in the dictionaries is:

"exchange of merchandise, especially, on a large scale" (See the Concise Oxford Dictionary) "interchange of merchandise on a large scale between nations or individuals: extended trade or traffic" (See Chambers Twentieth Century Dictionary) Going by the plain dictionary meaning of the words used in the definition section the intention of Parliament must be understood to be to exclude from the scope of the expression 'consumer' any person who buys goods for the purpose of their being used in any activity engaged on a large scale for the purpose of making Profit. As already indicated since resale of the goods has been separately and specifically mentioned in the earlier portion of the definition clause, the words "for any commerce purpose" must be understood as covering cases other than those of resale of the goods. It is thus obvious that Parliament wanted to exclude from the scope of the definition not merely persons who obtain goods for resale but also those who purchase goods with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit. On this interpretation of the definition clause, persons buying goods either for resale or for use in large scale profit activity will not be 'consumers' entitled to protection under the Act. It seems to us clear that the intention of Parliament as can be gathered from the definition section is to deny

the benefits of the Act to persons purchasing goods either for purpose of resale or for the purpose of being used in profit making activity engaged on a large scale. It would thus follow that cases of purchase of goods for consumption or use in the manufacture of goods or commodities on a large scale with a view to make profit will all fall outside the scope of the definition. It is obvious that Parliament intended to restrict the benefits of the Act to ordinary consumers purchasing goods either for their own consumption or even for use in some small venture which they may have embarked upon in order to make a living as distinct from large scale manufacturing or processing activity carried on for profit. In order that exclusion clause should apply it is however necessary that there should be a close nexus between the transaction of purchase of goods and the large scale activity carried on for earning profit. "

21. One of the members of the Commission, Sri Y. Krishan, however, took a different view. The learned Member was of the opinion that:

"..... the word used in Sec.2(1)(d)(i) "for commercial purpose" have to be given a precise and restrictive meaning: commercial purpose has to be distinguished from commercial production and commercial activity. The sub-section 2(1)(d)(i) and (ii) of the Consumer Protection Act have to be interpreted harmoniously. The interpretation of the words "Commercial purpose" in Sec.2(1)(d)(i) must be logical and equitable so as to avoid patent anomalies and inconsistencies in the application of the law. Viewed in this background, the various tests for determining whether the goods have been purchased for a commercial purpose would be:

(i) the goods are not for immediate final consumption but that there is only transfer of goods. i.e., resale.

(ii) there should be a direct nexus between the purchase of goods and the profit or loss from their further disposal. Such a direct nexus is absent when the goods or services are converted for producing other goods or services. After conversion there is no direct nexus between the kind of goods purchased and the kind of goods sold.

(iii) there is nexus of form and kind between the goods purchased and the goods sold. Such a direct nexus of form and kind ceases when the goods undergo transformation or conversion.

In brief the immediate purpose as distinct from the ultimate purpose of purchase, the sale in the same form or after conversion and a direct nexus with profit or loss would be the determinants of the character of a transaction-whether it is of a "commercial purpose" or not. Thus buyers of goods or commodities for "self consumptions" in economic activities in which they are engaged would be consumers as defined in the Act."

22. Secretary, Consumer Guidance and Research Society of India v. M/s. B.P.L. India Ltd. (1992 (1) CPJ 140), follows and affirms the decision in Synco Textiles and another decision in Oswal Fine Arts v. M/ s. H.M. T. Madras (1991 (1) CPJ 330). In this case, one Mrs.Shanta Manuel had purchased one paper copier from the respondent and installed the same in her premises. The National Commission dealt with the case in the following words:

"In the case now before us, it is clearly established by the materials on record that the purpose of the purchase of the paper copier by Mrs.Shanta Manuel was only to enable to earn her livelihood by the process of self employment. Such being the factual position Mrs.Shanta Manuel cannot be said to have purchased the machine for a 'commercial purpose' inasmuch as the basic prerequisite of large scale trading or business activity for purpose of making profit is totally absent. We hold that the view concurrently expressed by the District Forum and the State Commission that the complainant is not 'consumer' entitled to invoke the jurisdiction of the consumer forum is incorrect and the said finding will stand set aside.

23.Though rendered earlier to the 1993 Amendment, these decisions are broadly in accord with the amended definition. CONCLUSIONS:

24.We must, therefore, hold that (i) the explanation added by The Consumer Protection (Amendment) Act 50 of 1993 (replacing Ordinance 24 of 1993) with effect from 18.6.1993 is clarificatory in nature and applies to all pending proceedings.

(ii)Whether the purpose for which a person has bought goods is a "commercial purpose" within the meaning of the definition of expression "consumer" in Section 2(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.

(iii)A person who buys goods and use them himself, exclusively for the purpose of earning his livelihood, by means of self employment is within the definition of the expression "consumer".

25.So far as the present case is concerned we must hold (in agreement with the National Commission), having regard to the nature and character of the machine and the material on record that it is not goods which the appellant purchased for use by himself exclusively for the purpose of earning his livelihood by means of self employment, as explained hereinabove.

26.The appeal accordingly fails and is dismissed but without costs. If the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit.