

A THE JOINT LABOUR COMMISSIONER
AND REGISTERING OFFICER & ANR.

v.

KESAR LAL

B (Civil Appeal No. 2014 of 2020)

MARCH 17, 2020

[DR. DHANANJAYA Y. CHANDRACHUD
AND AJAY RASTOGI, JJ.]

- C *Consumer Protection Act, 1986 – s.2(d) and 2(1)(o)– ‘Consumer’– If includes beneficiary of a statutory welfare scheme – Parliament enacted 1996 Act to regulate employment, service conditions of building & other construction workers and also to provide for their safety, health & welfare measures – Pursuant thereto, State of Rajasthan framed 2009 Rules – Rajasthan Building & Other Construction Workers Welfare Board was constituted – One of the schemes formulated by Board for beneficiaries registered under the Act rendered financial assistance on the occasion of marriage of a beneficiary’s daughter – Respondent obtained Labour Beneficiary Identity Card from appellants after depositing Rs.25 as registration fee and Rs.60 as annual contribution – Submitted application for availing financial aid for the marriage of his daughter – Rejected – District Forum dismissed respondent’s complaint – Order set aside by State Commission – Affirmed by NCDRC – Held: Functions of the Board squarely fall within the definition of ‘service’ within the meaning of s.2(1)(o) – Exception is a service rendered free of charge – Workers registered under 1996 Act are beneficiaries of schemes made by the Board – Upon registration, every worker is required to make a contribution to the fund at such rate per month as may be prescribed by State government – Fund is applied inter alia for meeting the expenses incurred to fulfill the objects & purposes authorized by legislation – True test is not whether the amount contributed by beneficiary is adequate to defray the entire cost of expenditure envisaged under the scheme – So long as the service rendered is not free of charge, any deficiency of service is amenable to the fora for redressal constituted under Consumer Act– u/s.2(1)(d), a ‘consumer’ includes not only a person who has hired*
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or availed of service but even a beneficiary of a service – Public authorities such as the appellants constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers – Public accountability is a significant consideration underlying the provisions of Consumer Act – No reason to interfere with State Commission's decision to award the claim, subject to modification of rate of interest by NCDRC– Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 – ss.2(b), (k), 11, 12, 16-18, 22, 24 – Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 1998 – Rajasthan Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2009 – rr.43-45, 52, 58 – Building and Other Construction Workers Welfare Cess Act, 1996.

Dismissing the appeal, the Court

HELD: 1.1 In relation to a service, the definition of the expression incorporates in the first part any person who hires or avails of any service for a consideration which has been paid or promised (wholly or in part). In its latter component, the definition includes the beneficiary of such a service other than the person who actually avails of the service for consideration paid or promised, so long as such services are availed of with the approval of the person who hires or avails of the service for consideration. The ambit of the first component of the expression in Section 2(d)(ii) is expanded by the inclusive definition in the latter component. The expression 'beneficiary' is defined in Section 2(b), Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 to mean 'a building worker registered under Section 12'. The expression 'fund' is defined in Section 2(k) to mean 'the Building and Other Construction Workers Welfare Fund of a Board constituted under sub-section (1) of Section 24'. Hence, every building worker who is registered as a beneficiary under the enactment is entitled to the benefits provided by the Board from the fund. The effect of a non-payment of the contribution under sub-section (1) of Section 16 for a continuous period of not less than one year is that under Section 17 the individual ceases to be a beneficiary. However, under the proviso, a person

- A who is in default is allowed to deposit the arrears if there was sufficient ground to satisfy the secretary of the Board in regard to the non-payment of the contribution, upon which the registration is to stand restored. Section 22 provides for the functions of the Board. Under Section 24, the statute has
- B provided for the constitution of a welfare fund into which are credited (i) grants and loans made to the Board by the Central government; (ii) contributions made by the beneficiaries; and (iii) sums received by the Board from other sources as decided by the Central government. The fund is applied, under sub-section (2) of Section 24 to meet the expenses of the Board in the
- C discharge of its statutory functions; towards payment of salaries, allowances and remuneration and for meeting the expenses on objects and for purposes authorized by the Act. The Rules of 2009 have been framed in terms of the provisions governing the rule making power. Rule 43 provides for the constitution of the welfare fund. Rule 44 provides for the registration of building workers as beneficiaries. Rule 45 provides for contributions to the fund. Rule 52 provides for the expenditure from the fund. Under Rule 58, the Board is empowered to notify schemes regarding benefits. The Board has been entrusted with specific functions which have been defined in Section 22. These functions
- E squarely fall within the definition of the expression ‘service’ within the meaning of Section 2(1)(o) of the Consumer Protection Act 1986. The expression ‘service’ has been defined in the widest possible terms to mean ‘service of any description which is made available to potential users’. The exception in Section 2(1) (o) is a service which is rendered free of charge. The workers who are registered under the provisions of the Act of 1996 are beneficiaries of the schemes made by the Board. Upon registration, every worker is required to make a contribution to the fund at such rate per month as may be prescribed by the State government. The fund into which the contributions by
- F persons who are registered under the Act are remitted, comprises among other sources, the contributions made by the beneficiaries. The fund is applied *inter alia* for meeting the expenses incurred to fulfill the objects and purposes authorized by the legislation. In view of the statutory scheme, the services
- G which are rendered by the Board to the beneficiaries are not

services which are provided free of charge so as to constitute an exclusion from the statutory definition contained in Section 2(1)(o) and Section 2(d)(ii) of the Consumer Protection Act 1986. The true test is not whether the amount which has been contributed by the beneficiary is adequate to defray the entire cost of the expenditure envisaged under the scheme. So long as the service which has been rendered is not rendered free of charge, any deficiency of service is amenable to the fora for redressal constituted under the Consumer Protection Act 1986. The Act does not require an enquiry into whether the cost of providing the service is entirely defrayed from the price which is paid for availing of the service. Under the definition contained in Section 2(1)(d), a ‘consumer’ includes not only a person who has hired or availed of service but even a beneficiary of a service. The registered workers are clearly beneficiaries of the service provided by the Board in a statutory capacity. [Paras 12, 13] [191-C-E; 196-C-F; 197-A-C; 198-C-F; 199-B-H]

1.2 As a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner. Parliament has provided a salutary remedy to consumers of both goods and services. Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986. The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case. There is no reason to interfere with the ultimate decision of the State Commission to award the claim, subject to the modification of the rate of interest by the order of the National Commission. [Paras 14, 15] [200-A-D]

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- A *Regional Provident Commissioner v. Shiv Kumar Joshi (2000) 1 SCC 98 : [1999] 5 Suppl. SCR 294 ; Canara Bank v. United India Insurance Company Limited 2020 SCC Online SC 132 ; Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243 : [1993] 3 Suppl. SCR 615 ; Punjab Urban Planning and Development Authority (now GLADA) v. Vidya Chetal (2019) 9 SCC 83 : [2019] 12 SCR 516 ; National Campaign Committee for the Central Legislation on Construction Labour v. Union of India (2018) 5 SCC 607 : [2018] 9 SCR 204 – relied on.*
- B *Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 : [2009] 13 SCR 1239 ; Regional Provident Fund Commissioner v. Bhawani (2008) 7 SCC 111 : [2008] 6 SCR 767 ; Ministry of Water Resources v. Shreepat Rao Kamde Decision of Supreme Court dtd. 06.11.2019 in Civil Appeal No. 8472 of 2019 ; Huda v. Sunita (2005) 2 SCC 479 ; Jagmittar Sain Bhagat v. Director, Health Services, Haryana (2013) 10 SCC 136 : [2013] 8 SCR 77 – referred to.*
- C *Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 : [2009] 13 SCR 1239 ; Regional Provident Fund Commissioner v. Bhawani (2008) 7 SCC 111 : [2008] 6 SCR 767 ; Ministry of Water Resources v. Shreepat Rao Kamde Decision of Supreme Court dtd. 06.11.2019 in Civil Appeal No. 8472 of 2019 ; Huda v. Sunita (2005) 2 SCC 479 ; Jagmittar Sain Bhagat v. Director, Health Services, Haryana (2013) 10 SCC 136 : [2013] 8 SCR 77 – referred to.*
- D *Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 : [2009] 13 SCR 1239 ; Regional Provident Fund Commissioner v. Bhawani (2008) 7 SCC 111 : [2008] 6 SCR 767 ; Ministry of Water Resources v. Shreepat Rao Kamde Decision of Supreme Court dtd. 06.11.2019 in Civil Appeal No. 8472 of 2019 ; Huda v. Sunita (2005) 2 SCC 479 ; Jagmittar Sain Bhagat v. Director, Health Services, Haryana (2013) 10 SCC 136 : [2013] 8 SCR 77 – referred to.*

<u>Case Law Reference</u>			
E	[2009] 13 SCR 1239	referred to	Para 6 (vii)
	[1999] 5 Suppl. SCR 294	relied on	Para 6 (viii)
	[2008] 6 SCR 767	referred to	Para 6 (viii)
F	[2019] 12 SCR 516	relied on	Para 8
	[1993] 3 Suppl. SCR 615	relied on	Para 8
	[2018] 9 SCR 204	relied on	Para 10
	(2005) 2 SCC 479	referred to	Para 12
G	[2013] 8 SCR 77	referred to	Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2014 of 2020.

From the Judgment and Order dated 25.10.2019 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2312 of 2019.

Dr. Manish Singhvi, Sr. Adv., D.K. Devesh, Sandeep Kumar Jha, A
Advs. for the Appellants.

P.V. Dinesh, Adv. (AC), Ms. Sindhu T.P., Mukund P Unny,
Bineesh K., Ashwini Kumar Singh, C. Sanal Nambiar, Advs. for the
Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. The neat issue which has to be adjudicated upon in this appeal is whether a construction worker who is registered under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996¹ and is a beneficiary of the Scheme made under the Rules framed pursuant to the enactment, is a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act 1986. The issue assumes significance because the answer will determine whether a beneficiary of a statutory welfare scheme is entitled to exact accountability by invoking the remedies under the Consumer Protection Act 1986.

2. Parliament enacted the Act of 1996 "to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or with incidental thereto". In pursuance of the rule-making powers conferred by Sections 40 and 62, the Union Government has framed the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 1998. The State of Rajasthan has also framed the Rajasthan Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules in 2009². In pursuance of the provisions contained in Section 18, the State government constituted the Rajasthan Building and Other Construction Workers Welfare Board. The Welfare Board has formulated several schemes for beneficiaries registered under the Act. One of the schemes which was formulated on 1 August 2011 is for rendering financial assistance on the occasion of the marriage of a daughter of a beneficiary. The scheme envisages that financial assistance of Rs 51,000 is provided on the occasion of marriage, subject to a limit of assistance on two occasions.

¹ Act of 1996

² Rules of 2009

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- A 3. The respondent obtained a Labour Beneficiary Identity Card on 29 December 2011 under the Welfare Board from the appellants after depositing the registration fee of Rs 25 and an annual contribution of Rs 60. The identity card was valid for a period of one year, from 29 December 2011 to 28 December 2012. Seeking to avail financial aid under the scheme, the respondent submitted an application on 6 November 2012 in anticipation of the marriage of his daughter which was to take place on 24 November 2012. Nine months after the application was submitted, the Joint Commissioner of Labour, Jaipur issued an order of rejection covering 327 such applications, finding technical defects as a ground for the decision. The order reads thus:
- C “Upon scrutiny of applications received in this office, following points are found to be incomplete like incomplete application form, incompleteness of certificate of the planner in Form ‘B’, non-correctness of birth certificate, submission of application after solemnization of marriage and non-submission of affidavit or absence of some information in application and letter was issued reminding to complete the details, and upon non- submission of any answer to that in the office, it is not possible to grant the marriage assistance amount hence in following matters (list of 327 cases is annexed) the application for the marriage assistance are rejected.”
- E 4. The respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum³. The complaint was dismissed on 6 October 2016. In appeal, the State Consumer Disputes Redressal Commission⁴ set aside the order of the District Forum on 20 August 2019 and directed the appellants to pay an amount of Rs 51,000 to the respondent together with Rs 10,000 as compensation, Rs 5,000 for expenses and interest of 18 per cent per annum from the date of the institution of the complaint. The National Consumer Disputes Redressal Commission⁵ by its judgment and order dated 25 October 2019 affirmed the decision, overruling the objection that the respondent is not a ‘consumer’ within the meaning of the Consumer Protection Act 1986. The National Commission, however, reduced the rate of interest from 18 percent per annum to 9 percent per annum. The present appeal has arisen from the order of the National Commission.

³ District Forum

⁴ State Commission

H ⁵ National Commission

5. On 27 January 2000, the appellants stated before this Court that the amount which was awarded to the respondent would be paid. The appellants, however, pressed the question of law. Instead of saddling the respondent who is a construction worker with the insuperable burden of defending the proceedings before this Court, we requested Mr PV Dinesh, learned counsel to assist the Court as *amicus curiae*. We wish to record our appreciation of the able and objective assistance which has been rendered to the Court by Mr PV Dinesh.

6. Dr Manish Singhvi, learned Senior Counsel appearing on behalf of the appellants, urged the following submissions:

- (i) Parliament enacted the Building and Other Construction Workers Welfare Cess Act, 1996⁶. The cess which is collected under the Act is contributed to the fund. The fund is defined both under the Cess Act of 1996 as well as the Act of 1996. The cess which is collected forms a part of the Welfare Board constituted under Section 24(1). The collection of the cess which runs into thousands of crores becomes part of the fund which is generated from the compulsory exaction from employers who engage construction workers;
- (ii) A circular was issued on 25 January 2011 by the State of Rajasthan for the registration of construction workers. Under the circular, at the relevant point of time, an amount of Rs 25 was to be deposited as subscription fee for the preparation of an identification card while Rs 60 per year was charged as a contribution under Section 16(1) of the Act of 1996. On 24 November 2015 the subscription was reduced to Re 1 per month (Rs 12 per annum) so as to comprise of a payment of Rs 60 for a period of five years. This contribution is in the nature of a token amount to ensure registration and identification of building workers who can avail of the benefits under the Act of 1996 and even this contribution can be relaxed under the proviso to Section 16(1) upon the satisfaction of the Board that the beneficiary is unable to pay the contribution;

⁶ The Cess Act

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- A (iii) About 22,46,904 workers have been registered under the Act of 1996, out of which about 64,678 have benefited under the scheme between 2010-11 and 2019-20. Out of a cess of Rs 2,671 crores which has been collected, about Rs 1,488 crores is expended for the welfare schemes. The welfare schemes are funded by the cess and not by the contributions made under Section 16(1). Between 2010 and 2020, the contribution of the workers is Rs 27.92 crores which is meagre in comparison to the expenditure on the welfare schemes;

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C (iv) The welfare schemes initiated by the State government are to keep up with the rapid expansion of welfare activities. The cess which is collected under the Cess Act is for a specific purpose. The cess is nothing but a tax under Article 366(28) of the Constitution;

D (v) Undoubtedly, where the state for its multifarious functions, charges a fee and services are rendered on a *quid pro quo* basis, the activities of the State would be amenable to the jurisdiction of a consumer forum when a complaint of deficiency of service is made;

E (vi) On the other hand, where the State commits itself to welfare schemes and a negligible amount is charged in token of the services which are rendered, the beneficiary of a service is not a ‘consumer’ within the meaning of Section 2(d) of the Consumer Protection Act 1986. Such services are primarily financed out of budgetary allocations. In the present case, though a service is rendered by the Board, the expenditure on the welfare scheme is defrayed from the cess which is collected and hence, is not a ‘service’ within the meaning of Consumer Protection Act 1986;

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G (vii) In **Bihar School Examination Board v Suresh Prasad Sinha**⁷ (“Bihar School Examination Board”) this Court held that where a statutory function was being discharged by a public examination authority, a student aggrieved by the evaluation of the answer was not a

H 7 (2009) 8 SCC 483

- ‘consumer’ nor was the Board a ‘service provider’. On A
a parity of reasoning, the Welfare Board is not a service
provider under the Consumer Protection Act 1986;
- (viii) In the two decisions of this Court in **Regional
Provident Commissioner v Shiv Kumar Joshi**⁸ (“Shiv B
Kumar Joshi”) and **Regional Provident Fund
Commissioner v Bhawani**⁹, it was held that the
Regional Provident Fund Commissioner is a service
provider within the meaning of Section 2(1)(o) of the
Consumer Protection Act 1986. These decisions are
sought to be distinguished on the ground that the corpus
of the EPF scheme is contributed by the employers and
the employees, there being no contribution by the State
out of the tax revenues. In a recent judgment of this C
Court in **Ministry of Water Resources v Shreepat
Rao Kamde**¹⁰ (“Shreepat Rao Kamde”) decided on
6 November 2019, it has been held that a government
servant who makes a contribution to the General D
Provident Fund lies outside the purview of the Consumer
Protection Act 1986; and
- (ix) The edifice of the Consumer Protection Act 1986 is to E
codify a remedy for a contractual or commercial
transaction in substitution of the remedy of filing a civil
suit. The enactment of the Consumer Protection Act
1986 does not cover a redressal mechanism for an injury
which is caused absent a commercial or business F
transaction. The Act will not cover the services provided
by the State in the discharge of its welfare functions
which are highly subsidized or free.

7. Mr PV Dinesh, learned *amicus curiae* has, in his detailed written submissions, controverted the logic of the approach which has been adopted by the appellants. Mr Dinesh submits that the salient features of the Act and the Rules are as follows:

- (i) A construction worker is a ‘beneficiary’ under the Act, G
Rules and the Schemes which have been framed;

⁸ (2000) 1 SCC 98

⁹ (2008) 7 SCC 111

¹⁰ Civil Appeal No 8472 of 2019 H

- A (ii) Under Section 12, every worker should be registered as a beneficiary. Section 12(3) provides that an application must be submitted with documents together with a fee not exceeding Rs 50 as may be prescribed;
- B (iii) Section 18 deals with the constitution of the State Welfare Board which is a body corporate having perpetual succession and a common seal;
- C (iv) Section 24 requires the constitution of a Workers Welfare Fund into which the contribution of the beneficiaries is credited. The provisions of Rules 28 and 43 implement Section 24.
- D (v) Under Rule 43(b), the contribution paid by a beneficiary forms a part of the fund together with grants, loans, sums received by the Board and advances from the Union or State Governments, local authorities and other resources as decided by the Central or State Governments;
- E 8. Based on the above provisions of the Act and the Rules, Mr PV Dinesh submitted that:
 - (i) Every construction worker who is a beneficiary under the Act and the Rules is a contributor to the workers' welfare fund, and the service which is provided is not gratuitous;
 - (ii) The welfare schemes which are implemented by the Board cannot be construed as a sovereign function. The State Welfare Board is a body corporate which is capable of suing and being sued;
- F (iii) Though the claims of benefits provided under the scheme are higher than the contribution by the worker – beneficiary, this cannot be a reason to hold that it is not a contribution;
- G (iv) In the context of the denial of insurance claims, this Court while construing the provisions of Section 2(d) of
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the Consumer Protection Act 1986, has held in **Canara Bank v United India Insurance Company Limited¹¹** (“**Canara Bank**”) that even a beneficiary who is not a party to the contract is a ‘consumer’ under the Act;

- (v) In the present case, there was a gross deficiency of service on the part of the appellants and the denial of benefits under the welfare scheme was casual and mechanical. A poor construction worker was constrained to approach the consumer court, faced with the rejection of his application on the specious ground that it was not accompanied by an application for exemption from the procedural requirement of submitting it 90 days before the marriage of his daughter. The defect, if any, was curable and not fatal; and
- (vi) The remedy under the Consumer Protection Act 1986 is a valuable provision made by the Parliament to provide access to justice and the purpose embedded in the Consumer Protection Act 1986 will be defeated if a construction worker is required to approach a civil court or the writ jurisdiction under Article 226 to seek relief of a small claim.

In this context, reliance has been placed on the decisions in **Lucknow Development Authority v M.K. Gupta¹²** (“**Lucknow Development Authority**”), **Shiv Kumar Joshi and Punjab Urban Planning and Development Authority (now GLADA) v Vidya Chetal¹³** (“**Vidya Chetal**”).

9. The rival submissions will now be analysed. F

10. Before we deal with the specific issues of law which have been raised in these proceedings, we begin with a reference to a judgment of a two Judge bench of this Court in **National Campaign Committee for the Central Legislation on Construction Labour v Union of India¹⁴**. The judgment of this Court took note of the status of the implementation of the Act of 1996 and the Cess Act. Reviewing

¹¹ 2020 SCC Online SC 132

¹² (1994) 1 SCC 243

¹³ (2019) 9 SCC 83

¹⁴ (2018) 5 SCC 607

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- A the status of implementation across the country, Justice Madan B Lokur prefaced the judgment with the following observations:

“Symbolic justice—there is nothing more to offer to several millions of construction workers in the unorganised sector—not social justice, not economic justice. The reason is quite simple. No State Government and no Union Territory Administration (UTA) seems willing to fully adhere to and abide by (or is perhaps even capable of fully adhering to and abiding by) two laws solemnly enacted by Parliament, namely, the Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers’ Welfare Cess Act, 1996 (the Cess Act). Directions given by this Court from time to time to implement the two laws have been flouted with impunity. What is equally tragic is that multiple directions issued even by the Government of India under Section 60 of the BOCW Act have been disregarded by State Governments and UTAs — and this is candidly admitted in a statement made by the learned Additional Solicitor General in this Court and also by the Union of India on affidavit. Hopefully, the gravity of the situation in the constitutional and federal context, the human rights and social justice context will be realised by someone, somewhere and at some time.”
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(emphasis supplied)

- F The Court noted that more than Rs 37,400 crores has been collected for the benefit of construction workers under the Cess Act of which only an amount of Rs 9,500 crores has been utilized, ostensibly for their benefit. The Court emphasised that these laws were enacted to implement the Directive Principles of State Policy contained in Articles 39 and 42 of the Constitution and for enforcing the right to life under Article 21. The Court observed that monies which have been earmarked for construction workers had not been spent, and a clear picture emerges about the shocking state of affairs in regard to the welfare boards across the country. The Court noted:
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“...Overall, the affidavits gave a clear picture of a shocking state of affairs inasmuch as **some Welfare Boards had expenditure out of the collected cess for payment of entry tax/value**

added tax, purchase of washing machines for construction workers and purchase of laptops for construction workers. This Court found that rather astonishing since it appeared that there was no rationale in providing washing machines and laptops to construction workers who were by and large poor and uneducated as well as migrant labour..."

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(emphasis supplied)

Adverting to the vulnerabilities of the construction workers, the Court noted:

"What makes the situation even worse is that many of the construction workers are believed to be women and at least some of them have small children to look after. That even they are victims of official apathy truly reflects a very sad state of affairs, and the loss already caused to them and other construction workers cannot be remedied. The reason for this is that it is not known which construction worker is entitled to get how much in terms of money or what benefit and under which scheme. Some of these construction workers from the 1990s and even later, may perhaps have unfortunately passed away or might be untraceable or old enough to deserve a pension. The question therefore is: what should be done with the thousands of crores that have been collected for the benefit of construction workers but cannot be utilised for their benefit? Can the State Governments and the UTAs or the Welfare Boards unjustly benefit and fill their coffers at the expense of unknown and helpless construction workers, some of whom are women and some having small children? These are questions for which we have not been provided any answers at all — it is entirely for the Government of India and Parliament to decide how to legally appropriate these thousands of crores of rupees and then utilise the amounts for the benefit of construction workers, at least for the future, assuming nothing can be done for the past. It is a mammoth task for which the powers that be must brace themselves, if they are serious in assisting people with multiple vulnerabilities."

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The position in the State of Rajasthan was specifically mentioned in the judgment with regard to the failure to utilize the cess which was collected. The judgment noted that though in 2011-12, an amount of Rs 154.01 crores was collected, no figures for expenditure were

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A submitted. For 2012-13, an amount of Rs 173.83 crores was collected while the expenditure incurred for various schemes was only Rs 11.95 crores. In 2013- 14, an amount of Rs 251.95 crores was collected, of which only Rs 25.93 crores was spent.

11. The appellants have been entrusted with the solemn duty of B enforcing and implementing the provisions of the welfare legislation which has been enacted by Parliament specifically to ameliorate the C plight of construction workers. Construction workers belong to the unorganized sector of the economy. Many among them are women. Child labour is rampant. Their vulnerabilities have been attempted to be safeguarded by a law which unfortunately has not been implemented either in letter, or in spirit. Yet, we have in the present case, the D spectacle of a statutory welfare board seeking to exempt itself from being held accountable to the remedies provided under the Consumer Protection Act 1986. The submission which has been urged before the Court, simply put, boils down to this: the beneficiaries of the service pay such a meagre amount as contributions that they cannot be regarded as ‘consumers’ within the meaning of Section 2(d) of the Consumer Protection Act 1986. That is the submission which now falls for consideration.

12. Section 2(d) of the Consumer Protection Act 1986 provides E as follows:

“(d) “consumer” means any person who,—

F (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 G 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 H (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 8[~~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 [but does not include a person who avails of such services for any commercial purpose]; A

[*Explanation.*—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self- employment;]” B

In relation to a service, the definition of the expression incorporates in the first part any person who hires or avails of any service for a consideration which has been paid or promised (wholly or in part). In its latter component, the definition includes the beneficiary of such a service other than the person who actually avails of the service for consideration paid or promised, so long as such services are availed of with the approval of the person who hires or avails of the service for consideration. The ambit of the first component of the expression in Section 2(d)(ii) is expanded by the inclusive definition in the latter component. This was noticed in the judgment of a two Judge bench of this Court in **Lucknow Development Authority** where Justice RM Sahai, speaking for the Court, explained the ambit of Section 2(d): D

“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..” F

Emphasising the accountability of public authorities, the Court observed: G

“Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim H

- A immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law.
- B Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation..."
- In **Shiv Kumar Joshi**, a Bench of two learned Judges of this Court held that the invocation of the remedies under the Consumer Protection Act 1986 is permissible against the Provident Fund Commissioner by a member of the Employees' Provident Fund Scheme. The Court held that the Regional Provident Fund Commissioner discharges a statutory function and is not delegated with any of the sovereign powers of the State. In that context, the Court held:
- C "...The definition of "consumer" under the Act includes not only the person who hires the "services" for consideration but also the beneficiary, for whose benefits such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the Scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiaries within the meaning of that word used in the definition of "consumer"..."
- E The Court rejected the submission that the services which are provided under the EPF Scheme are rendered free of charge and therefore, would not qualify as a service under the Consumer Protection Act 1986. The same view has been reiterated by a Bench of three learned Judges of this Court in **Vidya Chetal**. The reference before the three Judge Bench arose upon a doubt having been expressed in regard to the correctness of the decision of a two Judge Bench in **HUDA v Sunita**¹⁵. The issue was whether the National Commission lacks the jurisdiction to decide the legitimacy of a demand for a composition fee and an extension fee on a challenge that there was a
- H ¹⁵ (2005) 2 SCC 479

deficiency in service. Referring to the definition of the expression A
'service' in Section 2(1)(o)¹⁶, the Court held:

"This definition is not exhaustive, rather the legislature has left the task to expound the provision on a case-to-case basis to the judiciary. The purpose of leaving this provision open ended, without providing an exhaustive list indicates the requirement for a liberal interpretation. Broadly speaking, it is inclusive of all those services performed for a consideration, except gratuitous services and contract of personal services. Moreover, the aforesaid provision reflects the legislative intent of providing impetus to "consumerism". It may be noted that such a phenomenon has had a benevolent effect on the government undertakings, wherein a new dynamism of innovation, accountability and transparency are imbibed."

Justice NV Ramana, speaking for the three Judge Bench, noted that all statutory obligations are not sovereign functions. Although sovereign functions/services are regulated and performed under a constitutional/statutory framework, yet there are other functions, which may be statutory, but cannot be called as sovereign functions. The Court held:

"..if the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the consumer forums would continue to have the jurisdiction to deal with the same. *We need to caution against over-inclusivity and the tribunals need to satisfy the ingredients under Consumer Protection Laws, before exercising the jurisdiction.*"

In the view of the Court:

"Therefore, it is a clearly established principle that certain statutory dues, such as fees, can arise out of a specific relation." G

¹⁶ 2. (1)(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;" H

- A Such statutory dues might be charged as a *quid pro quo* for a privilege conferred or for a service rendered by the authority. As noted above, there are exactions which are for the common burden, like taxes, there are dues for a specific purpose, like cess, and there are dues in lieu of a specific service rendered.
- B Therefore, it is clear from the above discussion that not all statutory dues/exactions are amenable to the jurisdiction of the consumer forum, rather only those exactions which are exacted for a service rendered, would be amenable to the jurisdiction of the consumer forum.”
- C A Bench of two learned judges has in **Canara Bank** elaborated upon the width of the definition contained in Section 2(d)(ii) in relation to the availing or hiring of services. Justice Deepak Gupta, speaking for the Bench, held:
- “..As far as the definition of the consumer in relation to hiring or availing of services is concerned, the definition, in our view, is much wider. In this part of the section, consumer includes not only the person who has hired or availed of the services but also includes any beneficiary of such services. Therefore, an insured could be a person who hires or avails of the services of the insurance company but there could be many other persons who could be the beneficiaries of the services. It is not necessary that those beneficiaries should be parties to the contract of insurance. They are the consumers not because they are parties to the contract of insurance but because they are the beneficiaries of the policy taken out by the insured.”
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- F The Court consequently came to the conclusion that a beneficiary of a service, in the context of a contract of insurance, need not be a party to the contract. Beneficiaries fall within the purview of the expression ‘consumer’.
- G In **Bihar School Examination Board**, the question before the Court was whether a statutory School Examination Board falls within the purview of the Consumer Protection Act 1986 when it performs a statutory function of conducting examinations. A two judge Bench of this Court held that the fee paid by a student to the Board for the conduct of examinations does not amount to a ‘consideration’ paid for a service.
- H Justice Markandey Katju, speaking for the Court observed:

“When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its “services” to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-à-vis other examinees. **The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.”**

(Emphasis supplied)

In **Shreepat Rao Kamde**, the issue before the Court was whether a subscriber to the General Provident Fund fulfills the definition of being a ‘consumer’ within the meaning of the Consumer Protection Act 1986. The issue had been considered in an earlier decision of this Court in **Jagmittar Sain Bhagat v Director, Health Services, Haryana**¹⁷, and was answered in the negative, holding that a government servant is entitled to claim retiral benefits strictly in accordance with the regulations governing the conditions of service and the statutory rules for which the appropriate forum for redressal would be the State Administrative Tribunal, if any, or the civil court but not the consumer forum. It was held thus:

“...it is evident that by no stretch of imagination can a government servant raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forum under the Act. The government servant does not fall under the definition of a “consumer” as defined under Section 2(1)(d)(ii) of the Act.

¹⁷ (2013) 10 SCC 136

- A Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any of his grievance, may be the State Administrative Tribunal, if any, or the civil court but certainly not a forum under the Act.”
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(Emphasis added)

- This decision was followed by the two judge Bench in **Shreepat Rao Kamde**. Justice Uday Umesh Lalit noted that in view of the earlier decision, a consumer complaint in regard to the dues payable under the
- C GPF was not amenable under the Consumer Protection Act 1986.

13. Now it is in this context that it is necessary to briefly advert to the provisions of the Act of 1996. The expression ‘beneficiary’ is defined in Section 2(b) to mean ‘a building worker registered under Section 12’. The expression ‘fund’ is defined in Section 2(k) to mean ‘the Building and Other Construction Workers Welfare Fund of a Board constituted under sub-section (1) of Section 24’. Section 11 speaks of the beneficiaries of the fund:
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- E “**11. Beneficiaries of the Fund:-**Subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.”

- F Hence, every building worker who is registered as a beneficiary under the enactment is entitled to the benefits provided by the Board from the fund. Section 16 requires a building worker who has been registered as a beneficiary to make a contribution:

- G “**16. Contribution of building workers:-** (1) A building worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

- H Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board." A

The effect of a non-payment of the contribution under sub-section (1) of Section 16 for a continuous period of not less than one year is that under Section 17 the individual ceases to be a beneficiary. However, under the proviso, a person who is in default is allowed to deposit the arrears if there was sufficient ground to satisfy the secretary of the Board in regard to the non-payment of the contribution, upon which the registration is to stand restored. Section 18 provides for the constitution of the State Welfare Boards. Section 22 provides for the functions of the Board in the following terms: B C

"22. Functions of the Boards:-(1) The Board may—

- (a) provide immediate assistance to a beneficiary in case of accident; D
- (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
- (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as may be prescribed; E
- (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;
- (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed; F
- (g) make payment of maternity benefit to the female beneficiaries; and
- (h) make provision and improvement of such other welfare measures and facilities as may be prescribed. G

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment. H

- A (3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however that the amount payable as grants-in-aid to any local authority or employer shall not exceed—
- B (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or
- (b) such amount as may be prescribed. whichever is less:
- C Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.”
- D Under Section 24, the statute has provided for the constitution of a welfare fund into which are credited (i) grants and loans made to the Board by the Central government; (ii) contributions made by the beneficiaries; and (iii) sums received by the Board from other sources as decided by the Central government. The fund is applied, under sub-section
- E (2) of Section 24 to meet the expenses of the Board in the discharge of its statutory functions; towards payment of salaries, allowances and remuneration and for meeting the expenses on objects and for purposes authorized by the Act. The Rules of 2009 have been framed in terms of the provisions governing the rule making power. Rule 43 provides for the constitution of the welfare fund. Rule 44 provides for the registration of building workers as beneficiaries. Rule 45 provides for contributions to the fund:
- “**45. Contribution to the Fund.**—(1) A beneficiary of the fund shall contribute to the fund at such rate per mensem as may be notified by the State Government under section 16 of the Act. This contribution shall be remitted in advance once in three months in any of the banks specified by the Board in the district in which the member resides.
- (2) If a beneficiary commits default in the payment of contribution continuously for a period of one year, he shall cease to be
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beneficiary of the Fund. However, with the permission of the Secretary or an officer authorized by him in this behalf the membership may be resumed on repayment of arrears of contribution with a fine of Rs 2 per month subject to the condition that such resumption shall not be allowed more than twice.”

Rule 52 provides for the expenditure from the fund. Under Rule 58, the Board is empowered to notify schemes regarding benefits. The Board has been entrusted with specific functions which have been defined in Section 22. These functions squarely fall within the definition of the expression ‘service’ within the meaning of Section 2(1)(o) of the Consumer Protection Act 1986. The expression ‘service’ has been defined in the widest possible terms to mean ‘service of any description which is made available to potential users’. The exception in Section 2(1)(o) is a service which is rendered free of charge. The workers who are registered under the provisions of the Act of 1996 are beneficiaries of the schemes made by the Board. Upon registration, every worker is required to make a contribution to the fund at such rate per month as may be prescribed by the State government. The fund into which the contributions by persons who are registered under the Act are remitted, comprises among other sources, the contributions made by the beneficiaries. The fund is applied *inter alia* for meeting the expenses incurred to fulfill the objects and purposes authorized by the legislation. In view of the statutory scheme, the services which are rendered by the Board to the beneficiaries are not services which are provided free of charge so as to constitute an exclusion from the statutory definition contained in Section 2(1)(o) and Section 2(d)(ii) of the Consumer Protection Act 1986. The true test is not whether the amount which has been contributed by the beneficiary is adequate to defray the entire cost of the expenditure envisaged under the scheme. So long as the service which has been rendered is not rendered free of charge, any deficiency of service is amenable to the fora for redressal constituted under the Consumer Protection Act 1986. The Act does not require an enquiry into whether the cost of providing the service is entirely defrayed from the price which is paid for availing of the service. As we have seen from the definition contained in Section 2(1)(d), a ‘consumer’ includes not only a person who has hired or availed of service but even a beneficiary of a service. The registered workers are clearly beneficiaries of the service provided by the Board in a statutory capacity.

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- A 14. As a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner. Parliament has provided a salutary remedy to consumers of both goods and services. Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers.
 - B The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986. The evolution of jurisprudence in relation to the
 - C enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case.
15. Consequently, and for the reasons that we have indicated,
- D there is no reason to interfere with the ultimate decision of the State Commission to award the claim, subject to the modification of the rate of interest by the order of the National Commission. The appeal shall accordingly stand dismissed. There shall be no order as to costs.

Divya Pandey

Appeal dismissed.