Supreme Court of India Laxmi Engineering Works vs P.S.G. Industrial Institute on 4 April, 1995 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- 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- 4. The learned counsel for the appellant submits that the purpose for which the appellant has purchased the said ma- chine 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: (emphasis added) 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." THE NATURE AND POWERS OF THE AUTHORITIES CREATED BY THE ACT: cial 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 Fo- rums/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: 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 arc 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 arc 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. " 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 arc 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 terms 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 Sec- tion 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 com- mercial 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 meanin g 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 am 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 pur- pose of earning profit. On this interpre- tation 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 %ill 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(l)(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(l)(d)(i) must be logical and equitable so as to avoid patent anomalies and inconsistencies in the ap- plication of the law. Viewed in this back- ground. 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. 22. Secretary, Consumer Guidance and Research Society of India v. M/s. B.P.L. India Lid. (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 pur- chased 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 ju- risdiction 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 defi- nition 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". 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.