

National Insurance Co. Ltd. vs Harsolia Motors on 13 April, 2023

Author: Ajay Rastogi

Bench: Ajay Rastogi, Bela M. Trivedi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).5352-5353 OF 2007

NATIONAL INSURANCE CO. LTD.

...APPELLANT(S)

VERSUS

HARSOLIA MOTORS AND OTHERS

...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S).5354 OF 2007

CIVIL APPEAL NO(S).2821 OF 2012

CIVIL APPEAL NO(S).3350 OF 2018

CIVIL APPEAL NO(S). OF 2023
(@ SPECIAL LEAVE PETITION (CIVIL) NO(S).1039 OF 2020)

JUDGMENT

Rastogi, J.

CIVIL APPEAL NO(S).5352-5353 OF 2007 Reason:

1. The assail in the present appeals by special leave is to judgment and order passed by the National Consumer Disputes Redressal Commission (hereinafter “National Commission”) dated 3rd December, 2004, whereby the National Commission, while reversing the finding of the Gujarat State Consumer Disputes Redressal Commission (hereinafter “State Commission”), regarding maintainability of the complaint filed at the instance of the respondent under the Consumer Protection Act, 1986 (hereinafter “Act, 1986”) held that a person who takes insurance policy to cover the envisaged risk

does not take the policy for the commercial purpose. Policy is only for indemnification of an actual loss and is not intended to generate profits and finally held that the respondent (insured) was a consumer as defined under Section 2(1)(d) of the Act, 1986 and the complaint filed at his instance was maintainable and be examined by the State Commission on merits.

2. Respondent no.1 (dealer in TATA vehicles) and respondent no.2 are the claimants. Respondent no.1 took out a fire insurance policy with the appellant for a cover of Rs.75,38,000/□ and respondent no.2 for a cover of Rs.90 lakhs. That on 28 th February, 2002, damage was caused to the goods of respondent nos.1 and 2 due to fire (during the course of Godhra riots). The appellant denied the claim of respondent no.1, while admitting the claim of respondent no.2 to the extent of Rs.54,29,871/□ The respondents filed complaint before the State Commission.

3. Respondent no.1 M/s Harsolia Motors, a commercial entity engaged in the business of sale of vehicles, took fire insurance policy from the appellant insurance company covering the office, showroom, garage, machinery lying in the showroom premises, etc. The grievance of the respondent was that their aforesaid premises were damaged during the Godhra riots on 28 th February, 2002. A complaint was instituted by the respondent, M/s Harsolia Motors, a partnership firm, before the State Commission, for compensation of damage caused on the ground that post□ Godhra incident, which took place on 27th February, 2002, riots broke out resulting into complainant's goods being destroyed by fire set up by rioters on 28 th February, 2002 and the respondent/complainant was entitled to be indemnified the insured sum under the policy of insurance.

4. The State Commission held that the respondent is not covered under the expression "consumer" as defined under Section 2(1)(d) of the Act, 1986 and held that the complainant being a company running a business from the premises to earn profits falls under the term "for commercial purpose" and the complaint is not maintainable under the provisions of the Act, 1986.

5. On an appeal being preferred by the respondent insured before the National Commission, the question arose as to whether the insurance policies taken by a commercial unit could be held to be hiring of services for commercial purpose and are hereby excluded from the provisions of the Act, 1986 after revisiting the provisions of the Act, 1986 and the definition of the terms "consumer" and "service" as defined under Section 2(1)(d) and 2(1)(o) of the Act, 1986, respectively the Commission recorded a finding that the expression used "for any commercial purpose" would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit and profit is the main aim of commercial purpose, but in a case where goods purchased or services hired in an activity which is not intended to generate profit, it would not be a commercial purpose and held that a person who takes the policy of insurance to cover the

envisaged risk, for indemnification of actual loss suffered is not ordinarily intended to generate profits and accordingly held that the respondent/complainant was a “consumer” under Section 2(1)(d) of the Act, 1986 and complaint filed at its instance is to be examined/decided by the State Commission on its own merits under the judgment impugned dated 3rd December, 2004, is a subject matter of challenge in appeal before this Court at the instance of the appellant insurance company.

6. While the notices were issued by this Court on 15 th April, 2005, the operation and effect of the judgment impugned was stayed. In consequence thereof, the complaint filed at the instance of the respondent has not been examined by the State Commission on merits so far.

7. The other batch of appeals which were heard along with Civil Appeal No(s).5352□ 5353 of 2007 (National Insurance Co. Ltd. v.

Harsolia Motors and Others) arising from the judgment of the National Commission, placing reliance on the impugned judgment dated 3rd December, 2004, applying the self□same principles are also challenged at the instance of the appellant insurer before us.

8. The seminal issue that emanates for our consideration is whether the insurance policy taken by the respondent (commercial enterprises) insured amounts to hiring of services for “commercial purpose” thereby excluded from the purview of the expression “consumer” as defined under Section 2(1)(d) of the Act, 1986.

9. Learned counsel for the appellant submits that there cannot be a blanket inclusion of all insurance matters within the purview of Act, 1986 and if that is being taken at the face value, it would render the provisions of the Commercial Courts Act, 2015 (hereinafter “Act, 2015”) nugatory and submits that Section 2(1)(XX) of the Act,2015 includes insurance and re□insurance within the ambit of commercial disputes.

10. Learned counsel further submits that law on the subject has been examined by this Court in Laxmi Engineering Works v. P.S.G. Industrial Institute¹ and it was held that “commercial purpose” is to be looked into, in the facts and circumstances of 1 (1995) 3 SCC 583 each case to consider the purpose for which the goods and services are bought or availed. If it is availed with a view to carrying out large scale commercial activity with profit motive, then the buyer would not qualify as a consumer and the Act, 1986 would not be applicable and the view of this Court has been consistently affirmed in the later judgments.

11. Learned counsel further submits that the Commission in its second last para explicitly takes the very policy of insurance within the purview of the Act, 1986 and in sequel thereof, regardless of the nature of transaction, whenever there is a claim for compensation in reference to the policy of insurance, such complaints became maintainable under the Act, 1986.

12. Learned counsel further submits that dominant purpose of obtaining insurance contracts by the business entities is to earn profits and thus has a close and direct nexus with it and accordingly these entities are not entitled to file the claim before the Consumer Court seeking summary proceedings and the present disputes are not of a small disgruntled consumer who is seeking claim of an insurance for loss of mobile for personal use, or of autorickshaw driver seeking claim for expenses incurred for fixing a defective engine as that is covered for his livelihood. The instant dispute pertains to large scale business entities entering into commercial agreements with the insurance companies to protect the risks associated in carrying out their businesses. If they are being permitted to invoke the jurisdiction as a consumer under the Act, 1986, it will frustrate the very mandate of the legislative wisdom, pursuant to which this Act has been enacted.

13. Learned counsel further submits that the doctrine of election is not available to the litigant who is aggrieved by the insurance contract as Section 2(1)(d) of the Act, 1986 and Section 2(7) of the Consumer Protection Act, 2019 Act specifically exclude the provisions of services “for commercial purpose” from the ambit of consumer courts and the only remedy lies to the commercial courts under the Act, 2015.

14. Learned counsel submits that if contention to the contrary of insurance for commercial activities falling within the ambit of the Act, 1986 is to be accepted, then obtaining any service for any commercial activity even for facilitating profit generation for commercial enterprise would fall within the expression “consumer” as defined under Section 2(1)(d) of the Act, 1986 and it would lead to improbability as it would go against the basic tenets of service being used for commercial ends whose violation give rise to civil action and not consumer redressal.

15. Learned counsel further submits that if the respondent’s submission of insurance as a service availed by any person within the meaning of the Act is accepted, this would entail an exponential growth of consumer disputes across the country, not only would that lead to frustration of literal spirit and intent of the socially and economically beneficial legislation, rather it would inadvertently give rise to the premiums charged by the insurance company which would again subserve the overall intent of the Act, as actual consumers who regularly avail the services will have to pay more for the same coverage and this can be taken note from the Statement of Objects and Reasons which was kept in mind for the purpose of making the amendment in the year 2002.

16. Learned counsel lastly submits that the purchase of insurance policy has a direct nexus with the commercial activity in a large scale enterprise. In other words, the insurance policy indemnifies the company against loss arising out of fire, earthquake or any other insured peril. What is reimbursed by the insurance company is a loss and loss is directly interlinked with the commerce of the company and, therefore, a complaint seeking reimbursement of a loss would not be maintainable before the Consumer Court if it is filed by a large scale commercial entity like the respondent herein and the interpretation addressed by the National Commission of the provisions of the Act, 1986 not only runs contrary to the judgments of this Court, it is otherwise not legally sustainable and deserves to be interfered by this Court.

17. Per contra, learned counsel for the respondent, submits that the purchase of insurance policy cover is a contract of indemnification of particular risk and not a contract of doing or not doing something to earn profit/loss out of such act. If the contemplated risk out of particular eventuality i.e., fire, flood, etc., does not occur, then there is no question of encashment of policy cover, and if this happens what is payable is the risk amount against premium paid in advance. Under the circumstances, the insurance policy cover is being offered/purchased not basically to earn profit, but to cover the uninvited risk, hence, buying of policy cover is not for commercial purpose even if it is purchased by commercial enterprises and what is commercial purpose is well defined not only in several dictionaries but also in the judgments of this Court and submitted that it may be noticed that the Act, 1986 bars only a transaction for “commercial purpose” but it does not bar any commercial enterprise to be a consumer and hence the commercial enterprise can be a buyer/consumer and can enforce its rights as a consumer, provided immediate intent is to generate profit out of such transaction by the commercial enterprise, as held by this Court in Madan Kumar Singh (Dead) Through LR. v. District Magistrate, Sultanpur and Others².

18. Learned counsel further submits that any transaction by commercial enterprises even without immediate intention to make profit cannot be regarded for “commercial purpose”, otherwise all transactions by commercial enterprises may or may not have even remote correlation of generating profit will be treated for commercial purposes. Say, for example, a company buying a water plant for its workers or for any stranger/outsider to serve free water or paint tins in bulk for upgrading walls etc. have no direct effect of earning profit out of it. Thus, buying a water plant cannot be treated for commercial purpose, otherwise virtually all transactions by commercial enterprise will get colour of commercial purpose and had it been such an intention of the legislature, then it would have worded the definition of term “consumer” differently – instead of “any person” would have used “any person other than commercial enterprises”, but the statute in its wisdom has allowed to cover commercial transaction with commercial purpose. Therefore, the transactions by the commercial enterprises per se cannot be considered as an exclusion altogether under the Act, 1986.

19. We have heard learned counsel for the parties and with their assistance perused the material available on record.

20. Before we proceed to examine the issue raised for our consideration, it will be apposite to take a bird’s eye view of the Act, 1986.

21. The Act, 1986 is a social benefit oriented legislation and, therefore, the Court has to adopt a constructive liberal approach while construing the provisions of the Act. To begin with the Preamble of the Act, 1986 which can afford useful assistance to ascertain the legislative intention, it was enacted to provide for the protection of the interests 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 law that a Preamble cannot control otherwise plain meaning of a provision.

22. In fact, the law meets long felt necessity of protecting the common man from such wrong for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interests of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively and inefficiently for reasons which are not necessary to be stated.

23. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. A scrutiny of various definitions such as “consumer”, “service”, “trader”, “unfair trade practice” indicates that legislature has attempted to widen the ambit and reach of the Act. Each of these definitions are in two parts, one explanatory and the other inclusive. The explanatory or the main part itself uses expressions of amplitude indicating clearly its wide sweep within its ambit to widen such things which otherwise would have been beyond its natural import.

24. The provisions of the Act, 1986 thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit□oriented legislation. The primary duty of the Court/Commission while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

25. Section 2(1)(d) defines “consumer”, Section 2(1)(m) defines “a person” and Section 2(1)(o) defines “service”, which are relevant to examine the moot question raised for our consideration are reproduced hereunder:

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

(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 services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first□mentioned person;

Explanation: 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;

.....

(m) "person" includes

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (22 of 1860) or not;

(o) "service" means service of any description which is made available to potential users and includes 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."

26. The word "consumer" is the fulcrum of the Act. Since the Act hinges on the twin concepts of defect in goods or any deficiency in service, a consumer is one who buys any goods or hires any service. The term "consumer" has, thus, been defined to mean a person who is –

(a) a buyer, or

(b) with the approval of the buyer, the user, of the goods in question, or

(c) a hirer or person otherwise availing, or

(d) with the approval of such aforesaid persons, the beneficiary, of the service or services in question With the condition super added that such buying of the goods or hiring or availing of any such service, is for a consideration, □

(i) paid, or

(ii) promised, or

(iii) partly paid or promised, or

(iv) covered by any system of deferred payment.

27. However, the word “consumer” so defined does not include a person, who, in case of goods obtains such goods for resale or for any commercial purpose, or who, in case of service, avails of such services, for any commercial purpose. An explanation appended to the above definition states that the expression “commercial purpose” does not include the use by the buyer of such goods or the person availing such service or services, exclusively for the purpose of earning his livelihood by means of self-employment.

28. It may be noticed that Section 2(1)(m) defines “person” and includes a firm, whether registered or not, apart from other categories without any distinction, big or small. So, as “services” defined under Section 2(1)(o) includes banking, insurance and if there is deficiency in service in the matter of banking/insurance, etc., subject to the fact that he is a consumer under Section 2(1)(d), remedy is always available to such a consumer to invoke the jurisdiction of the Act, 1986.

29. This Court adverted to the concept of “consumer” as defined under the Act, analysing the definition in the context of the Act, in Lucknow Development Authority v. M.K. Gupta³ held :

“3.....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. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss.....”

30. Later, this Court in Laxmi Engineering Works (supra), while dealing with the connotative expanse of the term “consumer” in the unamended form and the explanation added to the expression 3 (1994) 1 SCC 243 “Consumer” by an amendment, ruled that such explanation is clarificatory in nature and taking note of the explanation added by the amendment Act, 1993 extensively examined the definition of the term “consumer” as under:—“11. Now coming back to the definition of the expression ‘consumer’ in Section 2(d), a consumer means insofar 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 affirming 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 emphasise 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. and after a fair analysis of the definition "consumer" post-amendment 1993 finally held as under:

"21. 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 uses them himself, exclusively for the purpose of earning his livelihood, by means of self-employment is within the definition of the expression ‘consumer’.”

31. The exposition of law on the subject was further considered by this Court in *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and Others*⁴ in which one of us (Rastogi, J.) was a member and the question arose for consideration was whether the purchase of flats for the purpose of providing accommodation to nurses employed by the Lilavati Kirtilal Mehta Medical Trust hospital qualifies a purchase of services for commercial purpose and whether the Hospital Trust was excluded from the definition of “consumer” under Section 2(1)(d) of the Act, 1986, this Court after revisiting the scheme of the Act, 1986 and taking note of the law of precedence in *Laxmi Engineering Works (supra)* of which a reference has been made and placing reliance on

4 (2020) 2 SCC 265 the judgment of this Court in *Paramount Digital Colour Lab and Others v. AGFA India Private Limited and Others*⁵ held that a person whether or not a consumer or other activities meant for commercial purpose will always depend upon the facts and circumstances of each case.

32. It may be a case that a person who is engaged in commercial activities has purchased goods or availed of service for his personal use or consumption or for the personal use of a beneficiary and such purchase is not linked to their ordinary profits generating activities or for creation of self-employment, such a person may still claim to be a consumer and after discussion of various illustrations summarized the discussion after taking note of the broad principles that were culled out for determination whether the activity or transaction is for a commercial purpose, held as under:

“19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is “for a commercial purpose”:

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, “commercial purpose” is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.

5 (2018) 14 SCC 81 19.2. The purchase of the good or service should have a close and direct nexus with a profit[□]generating activity. 19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of “generating livelihood by means of self[□]employment” need not be looked into.”

33. This Court noticed that the hostel facilities were provided to the nurses employed by Lilavati hospital but after some time of completion of the project because of alleged poor building quality, the structure became dilapidated and the nursing staff had to vacate the flats being used by them and a consumer complaint filed by the Lilavati hospital for compensation on account of annual loss of rent was maintainable and whether the Trust was a consumer under Section 2(1)(d) of the Act.

34. In Lilavati Kirtilal Mehta Medical Trust (supra), this Court observed that there is no nexus between the purchase of flats by the appellant Trust and its profit generating activity as the flats were not occupied for undertaking any medical/diagnostic facilities within the hospital, but for accommodating the nurses employed by the hospital. In the given circumstances, it has nothing to do with earning of profits in providing facilities to the nurses and held that the Trust is a “consumer” under Section 2(1)(d) of the Act, 1986 for the transaction under consideration.

35. Thus, what is important is the transaction in reference to which the claim has been filed under the Act, 1986 by a person who claims himself to be a “consumer” covered under Section 2(1)(d) of the Act, 1986, such exposition of law on the subject has been further reiterated by this Court recently in Shrikant G. Mantri v. Punjab National Bank⁶ and after the analysis on the subject and taking note of the judgment of this Court in Lilavati Kirtilal Mehta Medical Trust (supra), of which reference has been made, examined the case on the facts in question and recorded a finding that the transaction in question would fall within the definition of the term “consumer” or “services” for the purpose of invoking jurisdiction under the Act, 1986.

6 (2022) 5 SCC 42

36. Thus, what is culled out is that there is no such exclusion from the definition of the term “consumer” either to a commercial enterprise or to a person who is covered under the expression “person” defined in Section 2(1)(m) of the Act, 1986 merely because it is a commercial enterprise. To the contrary, a firm whether registered or not is a person who can always invoke the jurisdiction of the Act, 1986 provided it falls within the scope and ambit of the expression “consumer” as defined under Section 2(1)(d) of the Act, 1986.

37. Applying the above principles to the present case, what needs to be determined is whether the insurance service has a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. The fact that the insured is a commercial enterprise is unrelated to the determination of whether the insurance policy shall be counted as a commercial purpose within the purview of Section 2(1)(d) of the Act.

38. In the case of Karnataka Power Transmission Corporation and Another v. Ashok Iron Works Private Limited⁷, this Court while answering the question in the affirmative observed :

“17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word “includes” by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word “includes” may have been designed to mean “means”. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word “includes” for the purposes of such enactment.

18. Section 2(1)(m) which enumerates four categories, namely,

(i) a firm whether registered or not;

(ii) a Hindu Undivided Family;

(iii) a cooperative society; and

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not while defining “person” cannot be held to be restrictive and confined to these four categories as it is not said in terms that “person” shall mean one or other of the things which are enumerated, but that it shall “include” them.

19. The General Clauses Act, 1897 in Section 3(42) defines “person”:

“3. (42) ‘person’ shall include any company or association or body of individuals, whether incorporated or not;”

20. Section 3 of the 1986 Act upon which reliance is placed by learned counsel for KPTC provides that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. This provision instead of helping the contention of KPTC would rather suggest that the access to the remedy provided to (sic under) the Act of 1986 is an addition to the provisions of any other law for the time being in force. It does not in any way give any clue to restrict the definition of “person”. 7 (2009) 3 SCC 240

21. Section 2(1)(m), is beyond all questions an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression “person” as it occurs in Section 2(1)(d). While defining “person” in Section 2(1)(m), the legislature never intended to exclude a juristic person like company. As a matter of fact, the four categories by way of enumeration mentioned therein is indicative, Categories (i), (ii) and

(iv) being unincorporate and Category (iii) corporate, of its intention to include body corporate as well as body unincorporate. The definition of “person” in Section 2(1)(m) is inclusive and not exhaustive. It does not appear to us to admit of any doubt that company is a person within the meaning of Section 2(1)(d) read with Section 2(1)(m) and we hold accordingly.”

39. Applying the aforesaid test, two things are culled out; (i) whether the goods are purchased for resale or for commercial purpose; or (ii) whether the services are availed for any commercial purpose. The two-fold classification is commercial purpose and non-commercial purpose. If the goods are purchased for resale or for commercial purpose, then such consumer would be excluded from the coverage of the Act, 1986. For example, if a manufacturer who is producing product A, for such production he may be required to purchase articles which may be raw material, then purchase of such articles would be for commercial purpose. As against this, if the same manufacturer purchases a refrigerator, television or air-conditioner for his use at his residence or even for his office has no direct or indirect nexus to generate profits, it cannot be held to be for commercial purpose and for afore-stated reason he is qualified to approach the Consumer Forum under the Act, 1986.

40. Similarly, a hospital which hires services of a medical practitioner, it would be a commercial purpose, but if a person avails such services for his ailment, it would be held to be a non-commercial purpose. Taking a wide meaning of the words “for any commercial purpose”, it would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit. Profit is the main aim of commercial purpose, but in a case where goods purchased or services hired is an activity, which is not directly intended to generate profit, it would not be a commercial purpose.

41. In other words, to make it further clear, let us have certain illustrations, as to whether the transaction falls for commercial purpose or whether the complainant can be held to be a “consumer” within the scope and ambit of Act, 1986.

(i) A CT scan machine was purchased by a Charitable Trust and that was found to be defective, the question raised whether the machinery was purchased for a commercial purpose and whether the appellant was a consumer. From the narration of facts, this Court in Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Pvt. Ltd. and Another⁸ held that the machine was purchased by the Charitable Trust for commercial purpose as every person who takes a CT scan has to pay for it and the services rendered are not free and thus the Trust was not a consumer.

(ii). In Rajeev Metal Works and Others v. Mineral & Metal Trading Corporation of India Ltd.⁹, a manufacturer imported raw material through statutory authority that acted as a canalizing agency

for manufacture and sale of the finished product. The appellant approached the National Commission alleging that the respondent had not supplied the required quantity demanded by the appellant. This Court held that the purchase was for a commercial purpose and the manufacturer was not a “consumer” for the purpose of the Act, 1986.

8 (2000) 1 SCC 512 9 (1996) 9 SCC 422

(iii). The bank which had taken bankers indemnity insurance policy from the insurance company and suffered loss owing to some of transactions in one of its branches, raised an insurance claim stating that it is owing to dishonesty of Branch Manager and the claim was repudiated by the insurance company stating that the alleged loss was because of some dishonesty of the Branch Manager and this being for commercial purpose, may not be a consumer.

(iv). The complainant is a private limited company running a diagnostic clinic and alleges that X-ray machine purchased by the complainant from the opposite party was defective. If an objection is raised that as machine was purchased for commercial purpose and the complainant cannot be said to be a consumer as defined under the Act, 1986 as he has been employed for commercial purpose and has been carrying out business for profit indeed the complainant is not a consumer under the Act, 1986.

(v). A company purchased the EPBX system for the better management of the business of the company for commercial purpose and the complaint filed for alleged supply of defective system may not be covered by the explanatory clause of Section 2(1)

(d) of the Act, 1986 as the transaction has no nexus to generate profits.

42. Thus, what is finally culled out is that each case has to be examined on its own facts and circumstances and what is to be examined is whether any activity or transaction is for commercial purpose to generate profits and there cannot be a straight-jacket formula which can be adopted and every case has to be examined on the broad principles which have been laid down by this Court, of which detailed discussion has been made.

43. Applying the above principles in the present case, what needs to be determined is whether the insurance service had a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose of the transaction was to facilitate some kind of profit generation for the insured or to the beneficiary and our answer is in the negative and accordingly we are of the view that the complaint filed by the respondent insured herein has no close or direct nexus with the profit generating activity and the claim of insurance is to indemnify the loss which the respondent insured had suffered and the Commission has rightly held that the respondent is a “consumer” under Section 2(1)

(d) of the Act, 1986.

44. We further reiterate that ordinarily the nature of the insurance contract is always to indemnify the losses. Insurance contracts are contracts of indemnity whereby one undertakes to indemnify another against loss/damage or liability arising from an unknown or contingent event and is applicable only to some contingency or act likely to come in future.

45. This Court in *United India Insurance Company Limited v. Levis Strauss (India) Private Limited*¹⁰ has held as under:

“53. A contract of insurance is and always continues to be one for indemnity of the defined loss, no more no less. In the case of specific risks, such as those arising from loss due to fire, etc. the insured cannot profit and take advantage by double insurance. Long ago, Brett, LJ in *Castellain v. Preston* [*Castellain v. Preston*, (1883) 11 QBD 380] said that : (QBD p. 386) “..... the contract of insurance ... is a contract of indemnity.

... and that this contract means that the assured, in the case of loss ... shall be fully indemnified, but shall never be more than fully indemnified.”” (emphasis added) 10 (2022) 6 SCC 1

46. Thus, it can be concluded that in the instant case hiring of insurance policy is clearly an act for indemnifying a risk of loss/damages and there is no element of profit generation and still what has been expressed by this Court is illustrative; it will always open to be examined on the facts of each case, as to the transaction in reference to which the claim has been raised has any close and direct nexus with profit generating activity.

47. We do not agree with the submission made on behalf of the appellant that if insurance claims are covered under the Act, 1986, then virtually all insurance matters will come within the purview of the Act, 1986 and this will render the Act, 2015 nugatory. In our view, both these Acts have different scope and ambit and have different remedial mechanism, are in different sphere having no internal co-relationship.

48. Consequently, the appeals are without substance and accordingly dismissed. No costs.

49. Let the State Commission may adjudicate the complaint of the respondents on its own merits in accordance with law and since it is an old matter, be decided expeditiously as possible, but in no case later than one year.

50. Pending application(s), if any, shall stand disposed of. CIVIL APPEAL NO(S).5354 OF 2007 – (*United India Insurance Company Limited v. M/s Diwakar Goiram Porkhayat*)

51. The present appeal is directed against the order passed by the National Commission dated 3rd December, 2004 holding that the insurance policy taken by the respondent (commercial unit) in the facts of the case was only to indemnify the loss which the respondent/complainant has suffered and the transaction in reference to which the insurance claim has been repudiated by the appellant, had no direct nexus with the profit generating activity and was a “consumer” as defined under Section

2(1)(d) of the Act, 1986.

52. The respondent/complainant (insured) is doing the business of sale and purchase of jewellery in the name and style of “Khazana Jewellers” who obtained a policy of insurance from the appellant for the period 21st October, 1999 to 20th October, 2000 to cover the risk of ornaments in business.

53. On 24th June, 2000, at about 7.00 a.m. when an employee of the respondent saw that the shutter of the showroom was partly open and that was indicative of the theft and upon inspection, it was found that goods worth Rs.20,55,200/- were stolen from the showroom.

54. On the claim being raised by the respondent to indemnify the loss suffered, it was repudiated by the appellant and that was challenged by the respondent by filing a consumer complaint before the State Commission, Ahmedabad, that was dismissed on the premise that the respondent was not a “consumer” within the ambit of Section 2(1)(d) of the Act, 1986 by an order dated 1 st April, 2004.

55. The respondent challenged the order of dismissal by an appeal before the National Commission taking note of the nature of the transaction and relying upon the order of the Commission in the case of M/s Harsolia Motors dated 3rd December, 2004, the Commission held that the transaction in reference to which the insurance claim has been raised by the respondent has no direct nexus with the profit generating activity and the insurance cover was obtained only to cover the loss, if any, being suffered on account of theft or by natural calamity and the order passed by the National Commission dated 3rd December, 2004 is the subject matter of challenge in appeal before us.

56. In the light of the judgment passed by us today in Civil Appeal Nos.5352-5353 of 2007 (National Insurance Co. Ltd. v. Harsolia Motors and Others), the present appeal is without substance and is accordingly dismissed. No costs.

57. The complaint is restored on the file of the State Commission and the same be adjudicated on its own merits in accordance with law and may be decided as expeditiously as possible, but in no case later than one year.

58. Pending application(s), if any, shall stand disposed of. CIVIL APPEAL NO(S).2821 OF 2012 – National Insurance Co. Ltd. v. M/s Ankur and Another.

59. The judgment under appeal is dated 15 th December, 2010 passed by the National Commission.

60. Brief facts of the case are that the respondent is engaged in the business of garments in wholesale, who took a standard fire and peril policy effective for the period from 6 th January, 2006 to 5th January, 2007 for a total sum of Rs.60,00,000/- There was a fire on 28th December, 2006 resulting in damage to the factory of the respondent. The appellant appointed spot surveyor, M/s Apex Surveyors Pvt. Ltd. for final survey, who submitted its report on 22nd December, 2008 assessing the loss to the tune of Rs.53,17,790/- after deducting salvage amount of Rs.1 lakh and factoring sound stock being saved after the fire at Rs.51,969/- The appellant claimed that the respondent has failed to submit certain documents to the assessor and, therefore, assessment on

such basis could be treated as void. In the meanwhile, SARFAESI proceedings were initiated against the respondent by Canara Bank (secured creditor).

61. While the claim of the respondent was being processed, the respondent filed a complaint before the State Commission claiming Rs.60,00,000/— along with interest. At this stage, the appellant filed a preliminary objection that the respondent is not a “consumer” within the definition of Section 2(1)(d) of the Act, 1986. The State Commission at one stage had held that the respondent is engaged in commercial activity and, therefore, is not a consumer. The finding returned by the State Commission was reversed by the National Commission under its order dated 15 th December, 2012 holding that commercial entity availing its services by the insurance company is a “consumer” in reference to the transaction in terms of Section 2(1)(d) of the Act, 1986.

62. We have assigned detailed reasons in Civil Appeal Nos.(5352—5353 of 2007 (National Insurance Co. Ltd. v. Harsolia Motors and Others). In the light of the judgment passed by us today in the said appeal, the present appeal is without substance and is accordingly dismissed. No costs.

63. The complaint is restored on the file of the State Commission and the same be adjudicated on its own merits in accordance with law and may be decided as expeditiously as possible, but in no case later than one year.

64. It is brought to our notice that pursuant to order dated 11 th May, 2011 of this Court, the appellant had deposited 50% of the claim made by the respondent and the office report dated 15 th February, 2023 indicates that an amount of Rs.59,74,814/— was invested in the fixed deposit with the maturity date of 16 th July, 2023. Let the amount be transferred to the State Commission and the money invested in fixed deposit shall continue and may be invested in an interest—bearing account on automatic renewal basis and the parties shall abide by the orders of the State Commission.

65. Pending application(s), if any, shall stand disposed of. CIVIL APPEAL NO(S).3350 OF 2018 – The Bank of New York Mellon (Formerly The Bank of New York) v. M/s METCO Export International and Others.

66. The appellant has filed the present appeal by special leave against the judgment and order dated 6th February, 2018 passed by the National Commission.

67. Brief facts of the case are that respondent no.1 entered into a transaction with a third party (an Italian buyer of respondent no.1) for supply of five containers of sesame seeds and oil seeds for USD 141,375. In relation to this transaction, the services of Federal Bank Ltd. (respondent no.2) were availed to send the invoice, bills of lading, surveyor’s certificate, bills of exchange, phytosanitary certificate and other related documents (four documents) to the buyer’s banker in Italy. Respondent no.2 engaged the services of the appellant to get export documents delivered to the buyer’s banker in Italy which in turn engaged services of a courier company (respondent no.3). The export documents were lost in transit.

68. Respondent no.1 filed a consumer complaint before the State Commission against the appellant, respondent no.2 and respondent no.3. The complaint was dismissed on the premise that respondent no.1 is not a consumer as defined under Section 2(1)(d) of the Act, 1986 by an order dated 10th December, 2013, that became the subject matter of challenge at the instance of respondent no.1 in appeal before the National Commission relying on the judgment in Laxmi Engineering Works (supra) and taking note of the judgment in the case of M/s Harsolia Motors, the National Commission recorded a finding that the dispatch of papers by the bank which were lost in transit and never received by the Italian buyer per se is not related to generate any profit to the respondent as the actual profit will come from the sale of the exported goods which has no nexus to profit generating activity.

69. After we have heard counsel for the parties and considering the view expressed by this Court in Civil Appeal Nos.5352-5353 of 2007 (National Insurance Co. Ltd. v. Harsolia Motors and Others), the present appeal is without substance and is accordingly dismissed. No costs.

70. The complaint is restored on the file of the State Commission and the same be adjudicated on its own merits in accordance with law and may be decided as expeditiously as possible, but in no case later than one year.

71. Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO(S). OF 2023 (@ SPECIAL LEAVE PETITION (CIVIL) NO(S).1039 OF 2020) – IFFCO Tokio General Insurance Company Limited v. M/s OPG Energy (P) Ltd.

72. Leave granted.

73. The present appeal has been filed by special leave to appeal against the judgment and order dated 27 th September, 2019 passed by the National Commission.

74. We have heard counsel for the parties and taking note of the fact initially an ex parte order was passed by the Consumer Forum against the appellant on 12th September, 2014, pursuant to which the appellant was directed to pay Rs.9,57,903/- with interest @ 9% per annum from the date of complaint i.e., 8 th April, 2011 and Rs.5,000/- towards litigation. The appeal/revision filed at the instance of the appellant before the State Commission and National Commission, both were dismissed by orders dated 25 th June, 2019 and 27th September, 2019 respectively.

75. After we have heard counsel for the parties, find no reason to interfere with the impugned order and the same is accordingly dismissed. No costs.

76. Pending application(s), if any, shall stand disposed of.

.....J. (AJAY RASTOGI)J. (C.T. RAVIKUMAR) NEW DELHI;

APRIL 13, 2023.