



ISBN No. 978-81-948677-9-1



# LANDMARK JUDGEMENTS ON CONSUMER LAW AND PRACTICE

## 2008-2020

Prof. (Dr.) Ashok R. Patil

### Published By:

Ministry of Consumer Affairs, Food & Public Distribution,  
Government of India, New Delhi  
&

Chair on Consumer Law and Practice,  
National Law School of India University,  
Bengaluru, Karnataka

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**Chair Professor**  
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## **LANDMARK JUDGMENTS ON CONSUMER LAW AND PRACTICE : 2008-2020**

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**2021**

**ISBN No. 978-81-948677-9-1**

**Price : Rs.1200/-**

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पीयूष गोयल  
PIYUSH GOYAL



रेल, वाणिज्य एवं उद्योग तथा  
उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्री  
भारत सरकार  
Minister of  
Railways, Commerce & Industry and  
Consumer Affairs, Food & Public Distribution  
Government of India

## MESSAGE

Government under the visionary leadership of Hon'ble Prime Minister Shri Narendra Modi ji has taken significant steps for protection of Consumer Rights. An important step in this direction is the introduction of Consumer Protection Act, 2019, which seeks to protect the interest of consumers by introducing an effective and time bound settlement of consumer disputes.

I am happy to know that the Chair on Consumer Law and Practice, National Law School of India University (NLSIU), Bengaluru, in association with the Dept. of Consumer Affairs is publishing the book titled "**Landmark Judgements of Consumer Protection Laws: 2008-2020**". This book may be useful to all consumer, law scholars, faculties, researchers, activists, consumer commissions, regulators, service providers, sellers of products and consumer organisations.

The judgements incorporated in the book may be useful to resolve consumer disputes pertaining to digital trade, e-Commerce, direct selling, mediation and traditional ways of business. It can be used as reference material and help speedy resolution of disputes across the country. The book may also be used to bring conceptual clarity on various provisions of the Consumer Protection Act, 2019 specifically e-Commerce, direct selling, misleading advertisements, product liability, court assisted mediation and issues of class action.

I congratulate Prof. (Dr.) Ashok R Patil, Professor of Law and Chair of Consumer Law and Practice, NLSIU Bengaluru and his team, and wish them all the best for successful publication of this book.

Piyush Goyal



अश्विनी कुमार चौबे  
Ashwini Kumar Choube



राज्य मंत्री  
पर्यावरण, वन एं जलवायु परिवर्तन  
उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण  
भारत सरकार  
MINISTER OF STATE  
ENVIRONMENT, FOREST AND CLIMATE CHANGE  
CONSUMER AFFAIRS, FOOD & PUBLIC DISTRIBUTION  
GOVERNMENT OF INDIA

### संदेश

उपभोक्ता संरक्षण अधिनियम, 1986 को निरस्त कर 20 जुलाई 2020 को उपभोक्ता संरक्षण अधिनियम, 2019 लागू किया गया था। नया अधिनियम अधिक समग्र और सख्त है और इसमें उत्पाद दायित्व, ई-कॉर्मस, भास्कर विज्ञापन, मध्यस्थता आदि जैसी नई अवधारणाएं शामिल हैं तथा यह उपभोक्ताओं के अधिकारों को बढ़ावा देने, संरक्षित करने और लागू करने के लिए केंद्रीय उपभोक्ता संरक्षण प्राधिकरण (सीसीपीए) नामक एक नियामक प्राधिकरण की स्थापना करता है। इस अधिनियम ने तीन स्तरीय उपभोक्ता आयोगों के दायरे को भी विस्तृत किया है और इन उपभोक्ता आयोगों को अदालती शुल्क प्राप्त करने का अधिकार भी दिया है। नए अधिनियम ने इन आयोगों को "इलेक्ट्रॉनिक मोड" में शिकायत दर्ज करने और "वीडियो कॉन्फ्रेंसिंग" के माध्यम से मामलों की सुनवाई करने में भी सक्षम बनाया है और इस प्रकार घर के दरवाजे पर न्याय की पहुंच प्रदान की है, जो कोविड महामारी के दौरान समय की मांग थी।

इस पृष्ठभूमि में, उपभोक्ताओं के अधिकारों पर कानूनी परिप्रेक्ष्य को समझने के लिए बैंकिंग, कृषि, बीमा, चिकित्सा, शिक्षा, रियल इस्टेट आदि जैसे विभिन्न क्षेत्रों से संबंधित भास्कर विज्ञापनों, अनुचित व्यापार प्रथाओं एवं उत्पादों में दोष, सेवाओं में कमी जैसे विभिन्न पहलुओं पर हाल के ऐतिहासिक निर्णयों को एक पटल पर लाना अनिवार्य है। इस प्रकार की गतिविधि आवश्यक है क्योंकि यह उपभोक्ता कल्याण कानून के अंतर्निहित सिद्धांतों और नीतिगत विचारों पर स्पष्टता प्रदान करती है, जो उपभोक्ता कल्याण कानून के इस विशाल क्षेत्र को आकार देने में सहायक रहे हैं।

इस प्रयास में, "उपभोक्ता संरक्षण कानूनों पर ऐतिहासिक निर्णय, 2008 से 2020" शीर्षक वाली इस पुस्तक में उपभोक्ता कल्याण कानून के ऐतिहासिक न्यायिक उदाहरणों का सारांश है, जो उपभोक्ताओं, छात्रों, शिक्षाविदों, पेशेवरों, सरकारी अधिकारियों, गैर सरकारी संगठनों, उपभोक्ता आयोग के सदस्यों एवं आम जनता के बीच इस संदर्भ में जागरूकता बढ़ाने में मदद करेगा।

मैं, प्रौ. (डॉ.) अशोक आर पाटिल, लॉ चेयर प्रैफेसर, द चेयर ऑन कंज्यूमर लॉ एंड प्रैक्टिस, नेशनल लॉ स्कूल ऑफ इंडिया यूनिवर्सिटी, बैंगलुरु को इस उद्घम के लिए बधाई देता हूं और इस प्रयास में उनकी सफलता की कामना करता हूं।

( अश्विनी कुमार चौबे )

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*Justice R.K. Agrawal*  
Former Judge, Supreme Court of India

President  
National Consumer Disputes  
Redressal Commission



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## FOREWORD

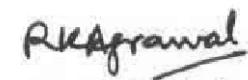
The consumer is the forgotten man of the modern Indian economy. The competition in the market has increased manifold and producers feel that they have a compelling need to attract customers to buy their products. With the increase in competition, the business and E-Commerce entity employed the lot of tactics to lure the buyers and are being exploited by the middlemen and manufacturers since time immemorial.

The process of development along with the expanding globalisation and liberalisation in India, the consumer movement has paved a way to social force which began with the necessity of protecting and promoting the interest of consumers against the unfair trade practices, rampant of food storages, hoarding, black marketing, adulteration of food and edible oils, high prices and poor quality of products, deficient services, misleading advertisements & defective products. The Government has brought out number of initiatives and statutory regulations to protect consumers but these are not working towards consumer protection due to illiteracy, poverty, ignorance of consumer legitimate rights and lack of organized efforts to check the market evils.

This book which is published by the Chair on Consumer Law and Practice, NLSIU, Bangalore, contains summary of Landmark Judgements of Consumer Protection Laws passed during the year of 2008-2020. These cases are basically filled under the old Consumer Protection Act 2019. This book is mainly intended to educate the consumers about their basic rights and bring awareness about the responsibilities and duties of consumer which

would influence individual behaviour to a great extent. It is also intended to be used as reference for students, teachers, academicians, Presidents and Members of Consumer Fora and all those with a concern for better consumer protection.

Congratulating Prof. (Dr.) Ashok R Patil, Chair Professor, Chair on Consumer Law and Practice, for taking the initiative. I wish and hope that this will be well received by all the stake holders.



(Justice R.K. Agrawal)

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लीना नन्दन  
LEENA NANDAN



सचिव  
भारत सरकार  
उपभोक्ता मामले विभाग  
Secretary  
Government of India  
Department of Consumer Affairs



## MESSAGE

It gives great pleasure to write this message for the publication on “Landmark Judgments on Consumer Protection Laws, 2008-2020” by the Chair of Consumer Law and Practice at National Law School of India University, Bangalore.

Empowerment of consumers has been accorded highest priority by the Government which enacted “The Consumer Protection Act 2019” and brought it into force with effect from July 20, 2020. The Act has a holistic approach and new concepts such as product liability, class action, mediation etc., reflect a paradigm shift in terms of proactive measures. The new Act has enabled the Central Government to establish a regulatory authority known as the Central Consumer Protection Authority (CCPA) for promoting protecting and safeguarding the rights of consumers.

This book is a compilation of landmark judicial precedents of consumers welfare legislation and includes judgments relating to Misleading Advertisements, Product Liability, e-commerce liability, Medical Negligence, Professional negligence etc., As a reference document the book is certain to benefit all stakeholders-consumers, students, academicians, as also the Presidents and Members of Consumer Commissions.

I Congratulate all members of the team for this work and wish them success in their future endeavours.

A handwritten signature in black ink, appearing to read "Leena Nandan".  
(Leena Nandan)



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## PREFACE

The Chair on Consumer Law and Practice, National Law School of India University (NLSIU), Bengaluru has taken up research on 'Landmark Judgements on Consumer Protection Laws, 2008 to 2020'. To this end, the chair has conducted studies to assess the existing legal regime for the protection of consumer's interest i.e. the Consumer Protection Act, 2019 in comparison with Consumer Protection Act, 1986 and spread the awareness among consumer about their right and duties that the Landmark Judgements of Supreme Court and National Consumer Dispute Redressal Commission passed under this New Consumer Protection Act, 2019. This book provides an overview of major sectors and under the old Act will have its recourse in deciding the matters under the Consumer Protection Act, 2019. The book has also analysed the role of Consumer Commission in development of the new concepts which included under the Consumer Protection Act, 2019 such as product liability, e-commerce, misleading advertisement, e-commerce etc., where the regulation of the same was the need of the hour. Further to identify the challenge for the effective implementation of the consumer protection laws in India so as to protect the interest of the consumer.

The Level of Consumer Protection and enforcement differ around the world; this is an area which has been the subject of increased regulatory

focus in many jurisdictions. This is accepted to continue as a number of jurisdictions. The government through appropriate policy measure, legal structure and administrative framework is protecting the consumer's rights but without the active participation of the consumer, the government cannot protect the interest of the consumer from being exploited. However, there is no doubt that the law can be effective only when authorities sincerely implement the Consumer Protection Laws and consumers are aware of their rights and responsibilities.

In this light, this book has been written with a dual purpose in mind i.e. to educate consumers about their basic rights and increase awareness about their responsibilities and duties; and to be used as a reference for students, teachers, academicians, members of Consumer Commission and all those with a concern for consumer protection in order to initiate a critical discussion on consumer protection.

I would like to acknowledge the Ministry of Consumer Affairs, Food & Public Distribution, Government of India for their cooperation and support. I would like to thank Vice Chancellor, Registrar, NLSIU for their cooperation and guidance. I would also thank all the contributors Mr. Akshay Yadav of Chair on Consumer Law and Practice, NLSIU, Mr. Arjun Singal, Student, NLSIU for their active role in bringing up this endeavours which will be beneficial to the students, teachers, academicians, presidents and Members of Consumer Fora and all those with a concern for better consumer protection.



**Prof. (Dr.) Ashok R. Patil**

Chair Professor,

Chair on Consumer Law and Practice

NLSIU, Bengaluru

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16. Food Safety and Standards Act, 2006
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18. Insurance and Regulatory Authority of India Act, 1999

19. Legal Metrology Act, 2009
20. Motor Vehicles Act, 1998
21. Ombudsman Scheme for Digital Transactions, 2019
22. Railway Claims Tribunals Act, 1987
23. Real Estate (Regulation and Development) Act, 2016
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25. Telecom Consumer Protection Regulations, 2015
26. Telecom Regulatory Authority of India Act, 1997

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## INTRODUCTION

*“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so”*

-Mahatma Gandhi

Consumer protection is perhaps one of the most expansive and broad area of law, as almost every facet of our society involves interaction by people in their capacity as consumers— food, housing, travel, banking, medicine, education, insurance, postal services, electricity, e-commerce etc.

Accordingly, consumer protection involves a discussion on three particular aspects – i) the nature of the sector; ii) the rights of the consumers and actions of the seller/service provider; and iii) the legal infrastructure of the sector.

The nature of sector refers to the type of service which is provided, the infrastructure required for provision of such service, the importance of the sector vis-à-vis the consumer, the practices adopted for providing the requisite service etc. In a nutshell, the nature of sector enables us to identify the nature of the service and establishes a standard for assessing every individual dispute. Therefore, every section of this book provides a brief introduction of sector in terms of the size of the market and recent changes in the activity.

The rights of the consumers and actions of the seller/service provider form the core of the dispute – the conflict arises due to an alleged deficiency in the goods sold or services provided by the latter. In the resolution of this conflict, it is essential to balance the rights of the consumer with their

responsibilities as well as balance the profit-earning motive of the seller/service provider with their duty to provide high quality goods and services. Therefore, every section of this book lists down the common disputes between the consumer and the seller/service provider in different sectors.

The legal infrastructure of each sector explains the legislations, regulations and the regulatory body which is responsible for the sector. This is essential in order to establish the legal regime which forms the basis of rights and duties of all parties, as well as to identify any lacuna in the law which impedes the courts from administering the justice. Therefore, every section of the book explains the legal infrastructure of different sectors.

The Indian Parliament, on 6<sup>th</sup> August 2019, passed the landmark Consumer Protection Bill, 2019 with an object to provide for protection of the interest of the consumer and for the said purpose, to establish authorities for timely and effective administration and settlement of consumer disputes. The Consumer Protection Act, 2019 (New Act) received the assent of the President of India and was published in the official gazette on 9<sup>th</sup> August 2019 and came into force on 20<sup>th</sup> July 2020 replacing old Consumer Protection Act, 1986 (Old Act). The comparative chart of the Consumer Protection Act, 1986 and The Consumer Protection Act, 2019 is attached as Annexure-I.

The New Act has widened the scope and provides more protection to the consumer as compared to Old Act which can be seen from the definition of the term 'Consumer' and 'Unfair Trade Practice'. The New Act has introduced the new concept of unfair contracts which includes those contracts whose terms and conditions are in favour of the manufacturer or service provider and are against the interest of the consumer. This concept would help to keep check on the business including banks and e-commerce sites that take advantage of their dominance in the market. The other significant addition that has taken place in 2019 is establishment of Central Consumer Protection Authority (CCPA) to regulate, protect and enforce the interest of the consumer and matters related to unfair trade practice. The another major

introduction in new act is concept of 'Product Liability' which covers within its ambit the product manufacturer, product service provider and product seller, for any claim for compensation. The Consumer Disputes Redressal Commissions (Consumer Fora) will be set up at the district, state and national levels similar to old Act but the consumer court can hear the complaints related to defect in goods/deficiency in services; unfair trade practice; excessive pricing; product liability etc.., such Complaints can be filed electronically and from where the compliant resides and works. Another significant addition that has taken place under the New Act is addition of Chapter on Mediation. It provides for establishment of mediation cells attached to the District, State and National Commissions. The Commissions may refer a matter for mediation if the parties consent to settle their dispute in this manner. Conclusively, the new act provides for the better protection of consumer right taking into consideration of technological advancement. The following rules and regulations notified under the New Act.

**I. Ministry of Consumer Affairs, Food and Public Distribution, Government of India, in exercise of the powers conferred under Section 101 enacted the following rules,**

1. Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020 (**w.e.f. 13<sup>th</sup> August 2020**)
2. Consumer Protection (E-Commerce) Rules, 2020. (**w.e.f. 23<sup>th</sup> July 2020**)
3. Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (**w.e.f. 15<sup>th</sup> July 2020**)
4. Consumer Protection (Salary, allowances and conditions of service of President and Members of the State Commission and District Commission) Model Rules, 2020 (**w.e.f. 15<sup>th</sup> July 2020**)

5. Consumer Protection (Mediation) Rules, 2020 (**w.e.f. 15<sup>th</sup> July 2020**)
6. Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020. (**w.e.f. 15<sup>th</sup> July 2020**)
7. Consumer Protection (General) Rules, 2020. (**w.e.f. 15<sup>th</sup> July 2020**)
8. Consumer Protection (Central Consumer Protection Council) Rules, 2020. (**w.e.f. 15<sup>th</sup> July 2020**)

**II. Ministry of Consumer Affairs, Food and Public Distribution, Government of India, in exercise of the powers conferred under Section 10, established Central Consumer Protection Authority on 24<sup>th</sup> July, 2020.**

**III. National Consumer Disputes Redressal Commission, in exercise of the powers conferred under Section 103 enacted following rules**

1. Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020 (**w.e.f. 24<sup>th</sup> July 2020**)
2. Consumer Protection (Mediation) Regulations, 2020. (**w.e.f. 24<sup>th</sup> July 2020**)
3. Consumer Protection (Consumer Commission Procedure) Regulations, 2020 (**w.e.f. 24<sup>th</sup> July 2020**)

With the passing of the Consumer Protection Act, 2019 and the repeal of the thirty-year old Consumer Protection Act, 1986, it is imperative that we examine the recent landmark judgements on various sectors of our society in order to understand the legal perspective on the rights of consumers. Such an activity is necessary as it provides clarity about the underlying principles of law and policy considerations which have been instrumental in shaping this vast area of law.

As a result, this book has been written with a dual purpose in mind – i) it seeks to educate consumers about their basic rights and increase awareness about their responsibilities and duties; ii) it seeks to be used as a reference for students, teachers, academicians, members of Consumer Fora and all those with a concern for consumer protection in order to initiate a critical discussion on consumer protection.

Keeping all of this in mind, this book provides an overview of major sectors and analyses the landmark judgements of each sector relating to consumer protection held under Consumer Protection Act, 1986 which can be used as precedents in deciding the disputes under Consumer Protection Act, 2019. The legislations, regulations and rules which have been covered by this book are:

1. Consumer Protection Act, 1986
2. Consumer Protection Rules, 1987
3. Consumer Protection Regulations, 2005
4. Consumer Protection Act, 2019
5. Telecom Regulatory Authority of India Act, 1997
6. Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017
7. Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017
8. Quality of Service of Broadband Service (Regulations), 2002
9. Telecom Consumer Protection Regulations, 2015
10. Food Safety and Standards Act, 2006
11. Food Safety and Standards Rules, 2011
12. Food Safety and Standards (Food Product Standards and Food Additives) Regulation, 2011

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13. Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011
14. Food Safety and Standards (Organic Food) Regulation, 2017
15. Food Safety and Standards (Advertising and Claims) Regulation, 2018
16. Food Safety and Standards (Packaging) Regulation, 2018
17. Railway Claims Tribunals Act, 1987
18. Aircraft Rules, 1937
19. Carriage By Air Act, 1972
20. Banking Ombudsman Scheme, 2006
21. Ombudsman Scheme for Non-Banking Financial Companies, 2018
22. Ombudsman Scheme for Digital Transactions, 2019
23. Real Estate (Regulation and Development) Act, 2016
24. Monopolies and Restrictive Trade Practices Act, 1969
25. Competition Act, 2002
26. Electricity Act, 2003
27. Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010
28. Insurance and Regulatory Authority of India Act, 1999
29. Insurance Regulatory and Development Authority of India (Re-insurance) Regulations, 2018
30. Insurance Regulatory and Development Authority of India (Protection of Policyholders Interests) Regulations, 2017

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31. Insurance Regulatory and Development Authority of India (Health Insurance) Regulations, 2016
32. Drugs and Cosmetics Act, 1940
33. Drugs and Cosmetics Rules, 1945
34. Drug Price Control Order, 2013
35. Guidelines for Project Approval and Classification of Tented Accommodation, 2015
36. Guidelines for Approval & Classification/Re-classification of Apartment Hotels, 2013
37. Guidelines for Approval of Online Travel Aggregators, 2018
38. Guidelines for Approval of Guest Houses, 2009
39. Guidelines for Approval of Stand Alone Restaurants, 2012
40. Guidelines for Classification of Heritage Hotels, 2014
41. Guidelines for Approval of Model Projects, 2015
42. Motor Vehicles Act, 1998
43. Draft National e-Commerce Policy, 2019

## AIRLINES SECTOR

The aviation sector in India is the third largest domestic aviation market in the world, and it is expected to become the world's third largest air passenger market by 2024.<sup>1</sup> As per official statistics and reports, a total of 183.9 million passengers comprised the passenger air traffic and over 22.1 lakh metric tonnes of cargo comprised the cargo traffic for Indian civil aviation market for the period 2017-18<sup>2</sup>.

### CONSUMER ISSUES

The level of consumer satisfaction differs with different airlines. However, the basic problems faced by the consumers are as follows<sup>3</sup>:

1. Cancellation of flights without prior notice.
2. Inordinate delay in flights without any justifiable reason.
3. Denial of boarding due to overbooking.
4. Loss of luggage by the airlines.
5. Poor quality of food and beverages provided in the airlines.
6. Problems in booking of flights or check-in of luggage (Particularly due to e-tickets and web check-in)
7. Delay in getting refunds on fares.
8. Unfair terms and conditions of travel.
9. Misleading/false information being given to the passengers.

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1 IBEF, 'Indian Aviation Industry' <<https://www.ibef.org/industry/indian-aviation.aspx>> accessed 14 July 2019.

2 DGVCA, 'Statistics' <<http://dgca.nic.in/reports/rep-ind.htm>> accessed 14 July 2019.

## DIRECTORATE GENERAL OF CIVIL AVIATION

As per Sec. 2(1)(o) of the Consumer Protection Act, 1986, the word ‘service’ includes provision of facilities in connection with transport.<sup>4</sup> Accordingly, consumer grievances with the airlines can be brought under the purview of the Sec. 2(1)(g) of the Act, which deals with deficiency of services.<sup>5</sup>

The Directorate General of Civil Aviation is an office of the Ministry of Civil Aviation, whose main purpose is to regulate the civil aviation sector in India. It must be noted that the priority of the DGCA is to ensure that air travel is safe for passengers.<sup>6</sup>

With regards to consumer protection, the following regulations and international conventions are applicable:

1. Rule 135 of the Aircraft Rules, 1937 deals with tariff to be charged by the aircrafts.<sup>7</sup> As per government policy, the services provided can be unbundled and different tariff rates are charged for opting for services like seating of choice, in-flight food and beverages, use of lounges etc.<sup>8</sup>
2. As per the terms of the Montreal Convention, 1999, the airlines are liable for delay, loss of baggage, damage to cargo.<sup>9</sup>

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<sup>3</sup> Rajiv Singh, ‘A blowback in India’s booming aviation industry: Surge in consumer complaints’ *The Economic Times* (19 November 2017) <<https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/a-blowback-in-indias-booming-aviation-industry-surge-in-consumer-complaints/articleshow/61705471.cms?from=mdr>> accessed 14 July 2019.

<sup>4</sup> Consumer Protection Act, 1986, s. 2(1)(o).

<sup>5</sup> Consumer Protection Act, 1986, s. 2(1)(g).

<sup>6</sup> DGCA, ‘About DGCA’ <<http://dgca.nic.in/dgca/dgca-ind.htm>> accessed 14 July 2019

<sup>7</sup> Aircraft Rules 1937, rule, 135.

<sup>8</sup> ‘Aviation consumer protection and liability in India’ (*Lexology*, 14 May 2018) <<https://www.lexology.com/library/detail.aspx?g=809aa382-2269-4717-bc34-44d99deec15e>> accessed 14 July 2019.

<sup>9</sup> Convention For The Unification Of Certain Rules For International Carriage By Air 1999, art 22.

3. As per Art. 19 of the Carriage By Air Act, 1972, the carrier is liable for damage caused to passengers and baggage due to delay<sup>10</sup>, and the liability amount is limited to 250,000 francs in case of injury to passenger and 250 francs per kilogram for damage to baggage.<sup>11</sup>

## CASES

### Expenditure incurred by passenger due to wrongful cancellation

#### **Station Manager, Air India, Aizawl v. Dr. K. Vanlalzami D/o K. Lalthanmawia<sup>12</sup>**

**Facts:** The Complainant, Dr. K. Vanlalzami, is a student at Dr. S. N. Medical College, Jodhpur, Rajasthan, pursuing her M. D. degree. She booked Air India flight no. AI23 for 08.01.2015 with PNR YVW1 for undertaking journey from Lengpui airport, Aizawl to New Delhi. The flight was scheduled to depart at 2.20 pm on 08.01.2015 from Lengpui Airport for Kolkata, from where the passenger was to take flight to Delhi. It has been stated that the said flight was rescheduled for departure at 4.15 pm on that very day, and the passengers including the Complainant were duly informed through messages. The Complainant arrived at Lengpui airport at 3.15 pm, i.e. one hour before the rescheduled time of departure, but she was told that the counter had already been closed, as the flight was overbooked. As a result, the Complainant was prevented from boarding the train from Delhi to Jodhpur of the same date. The Complainant was asked by the Air India to arrange her own flight on future date, but following protest made at the spot, she was rescheduled to fly from Silchar on 13.01.2015, saying that no flights were available from Lengpui airport before 20.01.2015. The Complainant had to incur extra expenditure for stay at Aizawl and in commuting to Silchar. It has, further, been alleged in the complaint that she was issued an open ticket

10 Carriage By Air Act, 1972, art 19.

11 Carriage By Air Act, 1972, art 22.

12 2016 SCC OnLine NCDRC 1561.

for travel from Silchar to Kolkata and then to Delhi on 13.01.2015, as a result of which, no seat was allotted to her. She was subjected to harassment by the staff at Silchar and then at Kolkata, as they objected to her check-in, saying that no seat had been allotted to her. The Complainant alleged that she was put to a lot of hardship, stress, tension and inconvenience, because of the failure of Air India to ensure that she could travel as per the booking made with them. The Complainant sent a legal notice also on 13.02.2015, which was ignored by the Air India. The Complainant filed the consumer complaint in question, claiming an amount of Rs. 2 lakhs as damages and compensation. The District Forum allowed the complaint, vide their order dated 15.12.2015 and held the Air India liable to pay a compensation of Rs. 1 lakh for preventing the Complainant from travelling from Lengpui airport on 08.01.2015. Being aggrieved from the order, the Opposite Party, Air India, filed an appeal before the State Commission, which was dismissed vide impugned order. Being aggrieved, the Opposite Party Air India filed before National Commission by way of the present revision petition. This revision petition had been filed against the impugned order dated 24.02.2016, passed by the Mizoram State Consumer Disputes Redressal Commission, Aizawl (hereinafter referred to as “the State Commission”) in First Appeal No. 1 of 2016, Station Manager, *Air India v. Dr. K. Vanlalzami*, vide which, while dismissing the said appeal, the order passed by the District Consumer Disputes Redressal Forum, Aizawl, dated 15.12.2015, in Consumer Complaint No. 11/2015, was confirmed.

**Issue:** Whether there was deficiency in service by the Air India Airlines?

**Decision:** It was held that the Opposite Parties were negligent in providing service to the Complainant, for which, they were liable to pay suitable compensation to her. As per the guidelines issued by the Director General of Civil Aviation are concerned, it is an admitted case of the Opposite Party that they never took this plea before the District Forum. Moreover, looking at the facts and circumstances of the case, in which a professional student

had to wait for as many as five days to get the next flight and that also from a distant place, it is quite apparent that she deserves to be properly compensated. Further, the Complainant missed her train also for travel from Delhi to Jodhpur and she had to take another ticket for the said journey. Considering the overall circumstances of the case, the compensation awarded to her by the District Forum, duly confirmed by the State Commission is quite appropriate and no change was called for in the same. It is held, therefore, that the impugned order passed by the State Commission and the order passed by the District Forum do not suffer from any illegality, irregularity or jurisdictional error on any account and the same was upheld. The revision petition was ordered to be dismissed, with no order as to costs.

Expiration of validity of ticket

**Air India v. Geetika Sachdeva<sup>13</sup>**

**Facts:** Ms. Geetika Sachdeva, the Complainant/Respondent, purchased an open air ticket from Air India, OP, through its agent International Students Travel Pvt. Ltd., for Delhi - London - Toronto - London - Delhi and she was given a confirmed status. She travelled to Toronto on 09.09.2001 and intended to return to Delhi on 06.12.2001. On 02.11.2001, she informed the Air India of her intention to travel from London to Delhi on 07.12.2001 and in turn she was informed that her ticket was confirmed for 07.12.2001 from London to Delhi by Flight No. AI 120. She boarded an Air Canada Flight from Toronto on 06.12.2001 and reached London from where she was to board the flight for Delhi. However, at London, she was informed that the validity of her ticket had expired and she was denied boarding. She was all alone, was not having sufficient funds to buy another ticket and had to wait for about eight hours at the airport when she met another passenger, named, Dr. Shobit Sinha. Dr. Shobit Sinha had come from Chicago and was also denied boarding on the same ground. She borrowed money from Dr. Shobit Sinha and purchased another ticket by Virgin Atlantic Airways

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13 2015 SCC OnLine NCDRC 9.

and came to Delhi. Her baggage was allowed by the Airlines - Air India, which was delivered to her after a long delay and she had to pay a sum of Rs. 665/- on 11.12.2001. She filed a complaint before the District Forum. The District Forum allowed the complaint, directed the OP-Air India, to pay a sum of Rs. 40,000/-, the price of the Air ticket, along with interest @ 9% p.a., from 07.12.2001, till the date of payment. Compensation in the sum of Rs.1,00,000/- was also imposed for mental and physical torture and convenience, besides costs of litigation in the sum of Rs. 5,000/-. The State Commission dismissed the appeal filed by the OP/petitioner.

**Issue:** Whether there was negligence on the part of Air India?

**Decision:** The Complainant has been dragged into litigation for about one-and-a-half decade. Consequently, we dismiss the revision petition with costs of Rs. 25,000/-, which be paid to the Complainant, by the Petitioner/OP, directly through Demand Draft, drawn in favour of the Complainant. The said amount be paid within 90 days' from the date of receipt of copy of this order, otherwise, it will carry interest @ 12% p.a., after the expiry of the said 90 days, till realisation.

Forcibly taking boarding passes

**Branch Manager, Indigo Airlines and Anr. v. Kalpana Rani Debbarma and ors.<sup>14</sup>**

**Facts:** The Complainant or the Respondents No.1 to 4 are the family members and were returning from Kolkata to Agartala through the Indigo Airlines (Petitioner) and purchased the tickets vide PNR No. IHRNSE. It was stated that the flight was scheduled on 08/01/2017 at 8:45 a.m. and that all the Complainant reported before the Indigo Airlines Counter at Kolkata Airport and after observing all the formalities the Airlines issued the boarding passes in favour of Complainants. It was pleased that the Airlines left all the complaints at Kolkata Airport without informing them despite all the

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<sup>14</sup> Revision Petition No.1520 and 1521/2018 (NCDRC).

Complainants being the Airport premises. A written complaint was lodged at Indigo Office at Kolkata Airport but the office staff as well as the Airport staff at their counter did not accept the Complaint Application and forcibly snatched away their boarding passes and further did not pay heed to their request for making alternate arrangements for their flight to Agartala. The Complainants were forced to return from Kolkata Airport as they did not have sufficient money to purchase fresh tickets and stayed in a hotel room and arranged money for purchasing new tickets to return to Agartala. The Complainants led to a lot of mental harassment and inconvenience. Aggrieved by this the Complainant issued the legal notice to the Indigo Airlines but received no reply. Constrained by this the Complainant Approached the District Forum seeking directions to Indigo Airlines to pay Rs. 16,432 for air tickets; Rs. 6338/- for two days of the first and second Complainant; Rs. 20,000/- for loss of three days studies of the Complainant No. 3; 4; Rs. 15000/- for cost of two days hotels charges and Rs. 2,00,000/- towards mental agony; Rs. 1,00,000/- towards compensation and Rs. 20,000/- towards costs along with interest and other reliefs. The district Forum based on the evidence adduced partly allowed the complaint directing Indigo Airlines to pay Rs. 16,432/- which is the cost of the tickets insured by the Complainant, hotel expenses of Rs. 10,000/- and Rs. 10,000/- towards compensation and Rs. 5,000/- towards costs. Aggrieved by the said order, both the Complainant and Indigo Airline's, preferred Appeals before the State Commission. The State Commission while concurring with the finding of deficiency of service enhanced the compensation to be paid by Indigo Airlines from Rs. 10,000/- to Rs. 20,000/- while confirming the rest of the order of the District Forum. Grieved by the decision, the Indigo Arline's filed this Revision Petition vehemently contended that the Airport Manager has stated that there were many announcements at regular intervals and that the Indigo Airlines is not responsible if the passengers did not report at the gate on time.

**Issue:** Whether there is any deficiency in service of the Indigo Airlines?

**Decision:** The NCDRC held that Indigo Airlines not only forcibly taking the boarding passes from the Complainants, no effort was made by the Airline

to compensate them by arranging for their travel in the next scheduled flight to Agartala. It is not in dispute that the Complainants were put to lot of mental agony and inconvenience as they had to stay in a hotel for two days and once again travelled by Indigo Airlines after two days on 10.01.17 after having had to purchase fresh tickets by spending an amount of Rs. 16,432/-. It is even more relevant to note that though both the Fora below gave a concurrent finding of deficiency of service and the State Commission increased the compensation amount from a meagre Rs. 10,000/- to Rs. 20,000/-, Indigo Airlines has chosen to challenge the order by way of this Revision Petition. The NCDRC dismissed the Revision Petitions with cost of Rs. 20,000/- to be paid to Complainants.

Jurisdiction of consignor

**Trans Mediterranean Airways v. Universal Exports and Anr.<sup>15</sup>**

**Facts:** The agent made out three airway bills for shipping of garments to Spain on behalf of the consignor through the Appellant-carrier. The airway bills from Bombay to Amsterdam were dated 25-08-1992 and the consignment through the Appellant-carrier reached Amsterdam on 30-08-1992. From Amsterdam, the consignments were sent to Madrid by road on the following day, and they reached Madrid on 03-09-1992 and were cleared by the Customs Authorities. The Appellant-carrier delivered the consignment to M/s Liwe Espanola, as according to them, that was the only recognizable address available from the documents furnished by the consignor. After nine months from the date of shipment, the agent made enquiry regarding two of the three airway bills. Since there was No. response, the agent made further enquiry again after four months. In response to the query, the Appellant-carrier informed the consigner that on finding the full name and complete postal address of the consignee as M/s Liwe Espanola, the Appellant-carrier has delivered the goods to it. It was at this stage, the consignor claimed that the consignee of the said consignment was Barclays Bank, Madrid, which

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15 (2011) 10 SCC 316.

had only one branch in Madrid and since the Appellant carrier had wrongly delivered the consignment to the address mentioned in the Block column instead of routing it through Barclays Bank and, therefore, there is deficiency of service. Accordingly, the consignor instituted a complaint under Section 12 of the CP Act before the National Commission, *inter alia*, claiming compensation for the alleged deficiency of service by the Appellant-carrier and the agent for not delivering the said consignment to the consignee. This appeal was filed under Section 23 of the Consumer Protection Act, 1986 (CPA) against the order in Original Petition No. 161 of 1994 of the National Consumer Disputes Redressal Commission, New Delhi. Here National Consumer Disputes Redressal Commission directed Appellant to pay sum equivalent to US \$71,615.75 with interest from date of complaint, till its realization, and imposed costs for deficiency of service.

**Issue:** Whether, National Commission under CPA had jurisdiction to entertain and decide complaint filed by consignor claiming compensation for deficiency of service by carrier, in view of provisions of CPA and Warsaw Convention?

**Decision:** Court held that protection provided under CPA to consumers was in addition to remedies available under any other Statute and it did not extinguish remedies under another Statute but provides additional or alternative remedy and further, value of subject matter was more than 20 lakhs, by which National Commission was conferred jurisdiction for any cause of action that arose under CPA, moreover, exercising of jurisdiction was in contravention of International Law, as Warsaw Convention and Hague Protocol had been incorporated into domestic law by passage of CPA. Thus, there was no legal infirmity in National Commission exercising its jurisdiction, as it was considered Court within territory of High Contracting Party for purpose of Rule 29 of Second Schedule to CPA and Warsaw Convention. So, National Commission under CPA had jurisdiction to entertain and decide complaint filed by consignor claiming compensation for deficiency of service by carrier, in view of provisions of CPA and Warsaw Convention.

Misplacing of luggage

**Sri Dibakar Bhattacharjee v. The Airport Director, Airport Authority of India, Air India (Airport Office) and ors.<sup>16</sup>**

**Facts:** Sri Dibakar Bhattacharjee and Sri Sanjoy Pandit Complainants in this case lost their luggage while on the journey to New Delhi by Air India Flight on 13-08-2015. They handed over their entire luggage at the Luggage counter of the OP Airline at Netaji Subhas Chandra Bose International Airport, Dum Dum. On reaching Indira Gandhi International Airport, New Delhi, they did not get back their luggage. As a result of such loss of luggage from the custody of the OPs, they could not discharge their professional duty before the Hon'ble Supreme Court for which they had to suffer huge financial loss. It was contended that the Airport Director, Airport Authority of India does not provide air transport service, but discharges statutory obligations as provided under Airports Authority of India Act, 1995, hence OP-2 i.e Air India (Airport Office) provides services for carrying passengers along with their luggage to different destinations. Thus on notice, other OPs contested the case. It is stated by these OPs that on receipt of complaint, messages were sent to different stations for locating the luggage, but the same could not be retrieved. Complainant No. 2 was contacted over phone by Air India, Baggage cell to know the description of baggage including contents of baggage, but he could not provide necessary information at that moment and then, he was requested to send the required information through e-mail. It is alleged by these OPs that after a long gap the Complainants sent message enquiring about the loss of luggage to Air India, Delhi Baggage Cell. These OPs state that they are willing and ready to pay compensation as per guidelines of the aviation sector. The Complainants claimed to have made several telephone calls to the said office of the OP Airline over phone on 13-08-2015. The OP Airline has not furnished any material proof to substantiate its claim in the matter.

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16 Consumer Case No. CC/487/2015 SCDRC West Bengal.

**Issue:** Whether there is deficiency in service by Air India & Ors?

**Decision:** After hearing both the parties and going through documents on record, Commission observed that the fact remains undisputedly the luggage of the Complainants got misplaced and insofar as the same was handled by the men of OP airline, it cannot shrug off due responsibility in the matter. Commission found that the Complainants Suffered considerable financial loss to them and were subjected to severe stress and mental agony in arranging necessary dresses. Hence complaint was allowed by State Commission against Air India & Ors., and dismissed against the Airport Authority of India. Air India & Ors were jointly and/or severally directed to pay Rs. 2,00,000/- as compensation and Rs. 10,000/- as litigation cost to each of the Complainants within 40 days. In default, the aforesaid compensation amount (not the litigation sum) shall carry simple interest @ 9% p.a. for the entire period of default.

**Col. D. K. Kapur v. KLM Northwest Airlines<sup>17</sup>**

**Facts:** The principal allegations of Col. Kapur related to a long delay in the departure and ultimate cancellation of the Airlines' flight on which he was booked for his journey Delhi - Amsterdam - Seattle on 24<sup>th</sup> July 2006; the inconveniences that he underwent at the Hotel Grand, Vasant Kunj, New Delhi where he and other passengers of this flight were put up by the Airlines till the departure of the Airlines' next flight (inconveniences like the lights in the Hotel room not working and the Hotel not being prepared to offer him even a cup of tea unless he paid for it, the latter forcing him to go hungry and hence go home at his own cost); he was ultimately given a boarding pass for a journey Delhi -Amsterdam - Detroit - Seattle as against the original routing of Delhi -Amsterdam - Seattle; the flight Detroit - Seattle was a low grade, cheap domestic flight on which he was not served any refreshment as he should have been for an international journey for which he had paid; one of his checked-in pieces of baggage went missing at Detroit to search which he

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<sup>17</sup> 2011 SCC OnLine NCDRC 312.

had to spend hours and as a result he could not catch the originally scheduled Detroit - Seattle flight; in his search of his missing baggage at Detroit, no staff of the Airlines helped him; and, finally, when he reached Seattle, his missing baggage could be located only after a three-hour long frantic search by his son, without the assistance of any Airlines staff, because it had been sent by a Detroit Seattle flight different from his.

**Issue:** Whether there was negligence by the airline company?

**Decision:** The National Commission held KLM airlines liable for deficiency in service in respect of a missing baggage piece of the petitioner. The Commission held that “the mental and physical harassment that a passenger, a senior citizen at that, would undergo when he is required, after so many hours of an international air journey, to collect his checked-in baggage at the point of first disembarkation from such a flight in order to board a connecting domestic leg of the routing to the final destination and finds one of the checked-in baggage pieces missing, with no one from the international or the partner air carrier available to lift the proverbial little finger to help him, would certainly amount to “injury” within the meaning of the term under section 14 (1)(d) of the [Consumer Protection] Act, entitling him to compensation.” The judgment is greatly appreciated as in the present times, there has been a surge of airline companies, however, there has not been an equal surge in the effective liability regime to hold airlines accountable. Very often, consumers are rendered helpless against gross deficiency and negligence of airline companies despite paying a huge amount for the same.

#### Overbooking of flights

**Air France v. O.P. Srivastava and Ors.<sup>18</sup>**

**Facts:** The Complainants O.P. Srivastava and Ors., had booked air tickets with the appellant Air France (OP-1), through an agent (OP-2) for his journey to Paris to attend a business meeting. As per the travel schedule, the departure

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18 2018 SCC OnLine NCDRC 548.

from Delhi to Paris was on 06.11.2002 and return on 09.11.2002. Due to change in the schedule of the meeting, at Paris, for which the Complainants had gone to Paris, they requested for change of date of return journey from 09.11.2002 to 10.11.2002. The Complainants were issued three confirmed tickets. However, on 10.11.2002 they were not allowed to board the flight at the airport in Paris due to over boarding as a result of overbooking. The Complainants alleged that they were subjected to humiliation and embarrassment by the staff of the Appellant airline. Their tickets were also not endorsed to travel by Air India departing on the same day, for which the appellant had provided them confirmed booking. The Complainants had to stay at Paris at their own expenses. According to the Complainants, since valuable 24 hours were lost, they being Commercially Important Persons, (CIP), in their absence, the schedule of meetings got disturbed, resulting in a monetary loss of ₹ 50,00,000/- to the Company as consequential business loss. Accordingly, the Complainants lodged the complaint before State Commission against the Appellant for compensating them for the aforesaid loss, harassment and humiliation. The State Commission upheld the complaint and awarded 50% of the amount asked for as compensation. The appeal has been filed by the aggrieved respondents before the National Commission.

**Issue:** Whether overbooking causes deficiency of service?

**Decision:** The Commission dealt with the legality of the practice of overbooking in flights and opined that the airlines must impose stringent conditions on the eventuality of cancellation of tickets rather than indiscriminately allowing overbooking on flights, this may lead to the development of an unfair trade practice for the purpose of earning profit. Holding that the Appellants had committed a deficiency of service, the Commission ordered them to pay a lump sum of Rs. 4,00,000/- to every appellant for the mental harassment and agony caused to the Complainants.

Proceedings before consumer forum to be treated as suit

**Ethiopian Airlines v. Telecom Sector, Ganesh Narain Saboo<sup>19</sup>**

**Facts:** The Respondent booked a consignment of Reactive Dyes with the Appellant Ethiopian Airlines to be delivered at the Dar Es. Salaam, Tanzania on 30.9.1992. The airway bills were duly issued by the Appellant from its office in Bombay at the Taj Mahal Hotel for the said consignment. According to the Respondent there was gross delay in arrival of the consignment at the destination, which led to deterioration of the goods.

**Issue:** Whether proceedings before Consumer Forum were suits?

**Decision:** In this case Appeal was preferred against judgment of National Commission setting aside order of State Commission and holding that Section 86 of CPC was not applicable since case in dispute was covered under provisions of Act. Here question was raised that whether proceedings before Consumer Forum were suits. It was held that, term “suit” included all proceedings of a judicial or quasi-judicial nature in which disputes of aggrieved parties were adjudicated before an impartial forum. Proceedings before Consumer Forums come within sweep of term “suit”. Act enumerated those provisions of CPC that were applicable to proceedings before consumer fora hence section 86 of CPC would not be applicable to consumer fora.

Refusal to accept electronic items as accompanied baggage

**M/s. Srilankan Airlines Ltd. v. Subhash Chawla<sup>20</sup>**

**Facts:** The Complainant Subhash Chawla along with his wife and two children made an excursion tour of Singapore, Malaysia, etc. and booked tickets from Srilankan Airlines through the agent M/s. D. Paul’s Travels. They were provided return air-tickets of Srilankan Airlines with confirmed seats booking from New Delhi to Malaysia. For their return journey to Delhi when the

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19 (2011) 8 SCC 539.

20 2013 SCC OnLine NCDRC 1017.

Complainant and his family reached Changi Airport, Singapore on 21.04.2006, the staff of Srilankan Airlines refused to accept their baggage which included a Sony television. The television set had to be brought by another aircraft as unaccompanied baggage for which they were charged Rs. 22,671/- (equivalent to 775 Singapore dollars). As he could not get the benefit of custom duty free allowance at Delhi Airport and had to further spend an amount of Rs. 1,000/- on transportation. The version of the Respondent was that the weight and measurement of the television set was in excess of the permissible limits and moreover, the television set, being an electronic item, was not permitted to be carried as accompanied baggage by the Airlines. The Complainant filed a complaint before the District Forum and the said Forum order allowed the same and asked the OP/Petitioner to reimburse a sum of Rs. 22,671/- for their wrongful refusal to carry the television set on the aircraft. The District Forum also allowed a sum of Rs. 1,00,000/- as compensation for mental agony and harassment to the Complainant for deficiency in service. A sum of Rs. 10,000/- was also allowed as cost of litigation. Two appeals were filed against this order, one by the Complainant for enhancement of compensation and the other by the Petitioner, but both the appeals were dismissed. Hence this revision petition was filed before the National Commission

**Decision:** The Commission held that the revision petition was partly allowed and the Petitioner was directed to pay compensation of Rs. 50,000/- to the Complainant in place of Rs.1 lakh as allowed by the District Forum in their order dated 12.12.2007, and the Petitioner shall not be liable to pay Rs. 22,671/- as baggage charges.

Wrongful charging of transaction fees

**Spicejet limited, Gurgaon v. Sanjay Rahar<sup>21</sup>**

**Facts:** This is a revised petition filed by Airlines Company, Spicejet Ltd. Gurgaon against the order of State Commission. A complaint was filed by

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21 2017 SCC OnLine NCDRC 810.

the Complainant as Rs. 125/- was charged as transaction fees inspite of DGCA circular which specifically directs that no airline should charge transaction fees and also it is Supreme Court ruling that no transaction fees should be charged. An appeal was filed by the Airline Company which was rejected by State Commission on ground that it was barred by limitation so a revision petition was filed by Airlines Company before NCDRC against the dismissal of appeal by State Commission.

**Issue:** Whether State Commission was justified in declining to exercise discretion vested under Section 15 of the Act and whether order suffers from any illegality or material irregularity in order to invoke jurisdiction of this commission under its revisionary jurisdiction?

**Decision:** NCDRC order came with dismissing the revision petition filed by the Airlines Company against the State Commissions dismissal of its appeal. NCDRC held that State Commission has not committed any jurisdictional error in coming to conclusion that there was no reasonable ground to condone delay caused in filing appeals. National Commission held that it fails to fathom any reason why there was delay of over six months on part of airline in obtaining certified copy of orders passed by district forum. Commission also found that both lower forums have returned a concurrent finding of fact that by charging transaction fees, spicejet has violated the directions issued by DGCA, a statutory body, whose directions are binding on all airline operators.

## BANKING SECTOR

As per official reports and statistics, the Indian banking sector comprises 27 public sector bank, 21 private sector banks, 49 foreign banks, 56 regional rural banks, 1562 urban cooperative banks and 94,384 rural cooperative banks.<sup>22</sup> As per the Global Findex Report 2017 released by the World Bank, 80% of the Indian adult population has a bank account due to the widespread implementation of the Jan Dhan Yojana.<sup>23</sup>

However, it must be noted that only 29% of the people with bank accounts have performed digital transactions and only 5% have used their bank accounts through the internet or through mobile phones.<sup>24</sup> Digital illiteracy and a lack of resources means that the majority of the Indian population still rely on the physical access to banks for availing banking facilities. Government initiatives such as Digital India and Bharat Net Programme aim at increasing the internet penetration into rural areas for greater use of e-banking.<sup>25</sup>

## CONSUMER ISSUES

Given the importance of banks for consumers, it is critical that consumer grievances are addressed. The Annual Report of the Banking Ombudsman

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22 IBEF, 'Banking Sector in India' <<https://www.ibef.org/industry/banking-india.aspx>> accessed 14 July 2019.

23 World Bank (2018), 'The Global Findex Database 2017: Measuring Financial Inclusion and the Fin-tech Revolution' <[https://globalfindex.worldbank.org/sites/globalfindex/files/2018-04/2017%20Findex%20full%20report\\_0.pdf](https://globalfindex.worldbank.org/sites/globalfindex/files/2018-04/2017%20Findex%20full%20report_0.pdf)> accessed 14 July 2019.

24 Ibid 56.

25 Tish Sanghera, '80% of Indians now have a bank account. So why is financial inclusion low?' *Business Standard* (Mumbai, 17 May 2018) <[https://www.business-standard.com/article/finance/80-of-indians-now-have-a-bank-account-so-why-is-financial-inclusion-low-118051700150\\_1.html](https://www.business-standard.com/article/finance/80-of-indians-now-have-a-bank-account-so-why-is-financial-inclusion-low-118051700150_1.html)> accessed 14 July 2019.

Scheme, 2017-18 provides a detailed breakdown of the complaints made by consumers<sup>26</sup>:

1. Non-adherence to the Fair Practice Code – RBI directives on interest rates, working hours, tax payment etc. are ignored.
2. Problems with ATM/Debit Cards – non-payment of cash by ATMs, wrongful amount of cash dispensed by ATMs, multiple debiting of account for a single transaction.
3. Levy of charges – levy of charges for processing fees, non-maintenance of minimum balance, pre-payment penalties etc.
4. Loans and Advances – delay in sanction, disbursement, non-observance of the prescribed time schedule of loan applications and rejection of application without reason.

### **RBI BANKING OMBUDSMAN SCHEME**

For protection of consumer rights and addressing consumer grievances, the RBI provides for the setting up of Customer Facilitation Cells (CFCs) by every service provider.<sup>27</sup> In addition, the Banking Ombudsman Schemes of the RBI seek to address various aspects of banking services:

1. Banking Ombudsman Scheme, 2006<sup>28</sup>
  - The Banking Ombudsman Scheme, 2006 provides for redressal of grievances on any of the specified grounds. The Ombudsman can either allow the parties to the dispute to reach an agreement through mediation or conciliation, failing which an award can be passed after hearing both sides.

<sup>26</sup> RBI, ‘Banking Ombudsman Scheme 2006: Annual Report 2017-18’ <<https://rbi.org.in/Scripts/PublicationsView.aspx?id=18948>> accessed 14 July 2019.

<sup>27</sup> RBI, ‘Customer Facilitation and Protection’ <[https://m.rbi.org.in/scripts/bs\\_viewcontent.aspx?Id=2189](https://m.rbi.org.in/scripts/bs_viewcontent.aspx?Id=2189)> accessed 14 July 2019.

<sup>28</sup> Banking Ombudsman Scheme, 2006.

2. Ombudsman Scheme for Non-Banking Financial Companies, 2018<sup>29</sup>
  - The Ombudsman Scheme for Non-Banking Financial Companies, 2018 provides for redressal of grievances relating to services rendered by NBFCs which are registered with the RBI.
3. Ombudsman Scheme for Digital Transactions, 2019<sup>30</sup>
  - The Ombudsman Scheme for Digital Transactions, 2019 provides for redressal of grievances relating to services relating to digital transactions.

## CASES

### Alleged dishonour of cheque

#### **Kanta Lamba v. Tanya Asset Management Company through its Proprietor Sanji v. Anand<sup>31</sup>**

**Facts:** The Complainant had deposited a sum of Rs. 16,00,000/- in two cheques, drawn on Bank B and C. Deposits were made with OP-1 for a period of six months at 12 percent per annum rate of interest. OP-1 issued a cheque drawn on bank H for Rs. 48,000/- towards interest. The said cheque was allegedly dishonored, when presented for payment, on the ground of insufficiency of funds in the account of OP-1. One year later, OP-1 transferred the fix deposit in favour of OP-Z. Therefore, OP-2 wrote to Complainant acknowledging the liability to pay the amount after 180 days with 18 percent per annum interest. The first cheque of Rs. 39,000/- was presented for payment and amount thereon realized. However, the other two cheques for Rs. 18 lakhs and Rs. 1,59,973/- being subsequently presented, had allegedly been dishonoured. Therefore, the present complaint was filed.

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29 Ombudsman Scheme for Non-Banking Financial Companies, 2018.

30 Ombudsman Scheme for Digital Transactions, 2019.

31 2012 SCC OnLine NCDRC 833.

**Issue:** Whether OP-2 was liable to pay the amount to the Complainant?

**Decision:** The question before the National Commission was whether OP-2 was liable to pay the amount to the Complainant. It was held that since OP-2 had accepted the transfer of liability of Rs. 18.39 lakhs due from OP-1 to the Complainant. Thus, the settlement reached between the Complainant and OP-2 was categorically for settlement of the entire dispute and since the latter had agreed to accept Rs.10.80 lakhs as full and final settlement of all dues, no claim survived.

Amount of compensation

**Jitendrakumar Karsandas Ved Ors v. Union of India Ors<sup>32</sup>**

**Facts:** The Jitendrakumar Karsandas Ved, his wife and daughter opened four MIS accounts with the Opposite Party. Opposite party forged the signature of the Complainant and closed the MIS accounts prematurely and transferred Rs. 4,73,325/- to a bogus account without knowledge of the Complainant. Allegedly there is violation of rules as opposite parties permitted withdrawal by cash, when there is a rule that if payment of more than Rs. 20,000/- is to be made, then the same should be made by cheque only. The Complainant filed a complaint before the District Consumer Dispute Redressal Forum, Godhra. The District Forum allowing the complaint of the Complainant passed the order that the opponent No.3 is hereby ordered to pay up Rs. 4,80,000/- to the Complainants on maturity with 15% interest from 28.02.12 till realisation. If, the opponent pays up the said amount within 60 days from the date of this order, then from 28.02.12 to realisation, the opponent shall pay 9% interest on the said amount of Rs. 4,80,000/- and Rs. 16,000/- towards physical and mental harassment and toward the cost of this application and expenses of handwriting expert. Aggrieved by the order of the district forum, the Opposite Party preferred the appeal before the State Commission. The State Commission allowed the appeal and set aside and quashed the order of the district forum but partly allowed the and

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<sup>32</sup> Revision Petition No. 2050/2017 (NCDRC).

modified the order of the district forum to the extent that the Opposite Party No. 3 shall pay to the Complainants Rs. 4,80,000/-with the running interest @ 6% from 28-02-2012 till the payment and rest of the order towards the compensation and cost is maintained. Hence this Revision petition.

**Issue:** Whether the amount payable to the Complainant is paid according to the saving bank interest?

**Decision:** The National Commission agreeing the contention of the Respondent that after the maturity period the amount is paid with the interest payable in the saving bank account and the State Commission has already granted 6% p.a. interest, which is more than saving bank rate of interest. Hence, I do not find any merit in the revision petition for enhancing the rate of interest to be paid beyond the maturity date.

Application for return of documents

**Bank of Baroda v. Ranjeet Singh<sup>33</sup>**

**Facts:** The Complainant/Respondent had availed the loan facility for the sum of Rs. 28.00 Lakh from the Petitioner Bank and to secure the repayment of the said loan, had mortgaged his immovable property by depositing the title deeds. The Respondent became irregular in repaying the loan amount and contacted the Petitioner and informed them that he could repay the loan by selling the mortgaged property to which the Bank officials had no objection and, therefore, the Respondent agreed to sell the mortgaged property for a throw away price of Rs. 25.00 lakh although the market value of the plot was claimed to be Rs. 35.00 lakh. The Respondent deposited the same with the Petitioner. The Respondent called upon the Petitioners to release the title documents of the plot deposited by him, which the Petitioners declined on the plea that the Respondent was in arrears of another loan, which he had taken from another Branch of petitioner. The Respondent alleging deficiency in service filed a complaint before the District Forum and filed an interim application to return the title deeds. The District Forum allowed the interim

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<sup>33</sup> 2012 SCC OnLine NCDRC 626.

application. On appeal, the State Commission affirmed the order of District Forum. Hence the present revision petition has been filed.

**Issue:** Whether the District Forum was justified in allowing the interim application of the Respondent seeking return of the documents?

**Decision:** The question before the National Commission was whether the District Forum was justified in allowing the interim application of the Respondent seeking return of the documents and the State Commission in continuing the said order. It was held that the provisions of section 171 of the Indian Contract Act, 1872 as well as the law as laid down by the Supreme Court of India. There was no escape from the conclusion that the Bank could claim lien even on the title documents pertaining to the plot in question even for the loan of their different branch. However, the provisions of the Recovery of Debts Due to Banks and Financial Institutions, Act, 1993 left no manner of doubt that the Legislature had clearly forbidden any other Court or Authority to exercise any jurisdictional power or authority except the SC and HC exercising their jurisdiction u/Art. 226 and 227 of the Constitution in relation to matters specified in s. 17 of the 1993 Act. The object of the Act was that such matters should not be considered and decided by any other Court or authority except the Tribunal constituted under the 1993 Act. The main relief claimed by the Respondent, alleging deficiency in service on the part of Petitioner, was for return of the title deeds. Once the documents had been ordered to be returned, it amounted to granting the relief prayed in the complaint. There was no escape from the conclusion that the order passed by the District Forum and affirmed by the State Commission were legally unsustainable and were liable to be set aside. Hence, the revision petition was allowed.

Availing of banking services to forward certain documents

**Metco Export International v. Federal Bank Limited and others.<sup>34</sup>**

**Facts:** The Complainant/Appellant Metco Export International is an export company which exported to Italy five containers of sesame seeds. All

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<sup>34</sup> 2018 SCC OnLine NCDRC 1095.

documents were deposited with OP1, the Federal Bank who had forwarded them to the OP2, the Bank of New York, through OP3, the courier company to be further forwarded to the buyer's bank. However, the buyer did not receive the documents and the documents were lost somewhere in transit. When the Complainant contacted the buyer, he came to know about the loss of documents. Due to this the buyer could not take the material and the demurrage charges were levied on the Complainant. Later on, the Complainant got duplicate papers prepared and got another buyer in Poland, but by that time the international price of sesame seeds had fallen and therefore, he suffered a loss as he sold the items for a lesser price. Moreover, the Complainant had to spend for transporting the material from Italy to Poland. The OP1 had also debited his account for commission. Then the Complainant filed a consumer complaint before the State Commission. The State Commission rejected the case on the grounds that the Complainant is not a consumer as he was engaged in a commercial activity. Aggrieved by the said order, the Complainant filed the instant appeal.

**Issue:** Whether the Complainants were engaged in commercial activity?

**Decision:** The National Commission relied on the decision of the Supreme Court that has made it clear that commercial purpose shall depend on the facts and circumstances of each case. It said that dispatch of papers by the Bank per se is not going to generate any profit to the Complainant as the actual profit will come from the dispatch and sale of the exported goods. Further, the Commission observed that the Complainant had availed banking services for forwarding certain documents to a particular destination. It is clear that availing of this service is not an activity directly leading to profit. Thus, the Complainant is a consumer.

Compensation for heritage ornaments

**The Manager, HDFC Bank Ltd. v. Sk. Sahedul Haque<sup>35</sup>**

**Facts:** The Complainant/Opposite Party herein took a gold loan from the Petitioner to the tune of Rs. 38,700/- only on condition of payment of

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<sup>35</sup> 2012 SCC OnLine Cal 161.

interest by the Complainant on the valuation made by the said bank. On availing of the said loan by the Complainant, he paid interest to the bank as agreed on. But the petitioner sent a notice to the Complainant intimating that the dues had been adjusted against the gold and that a pay order of Rs. 4,828/- . The Complainant/Opposite Party herein filed a complaint before the learned Kolkata District Forum, praying for compensation of Rs. 4 lakhs only in place of the heritage gold ornaments, to replace the ornaments in respect of the rest amount of Rs. 23,700/- and other reliefs.

**Issue:** Whether the compensation is granted to the Complainant?

**Decision:** Accordingly, the District Forum allowed the complaint case directing the Petitioner to pay compensation of Rs. 1 lakh only in place of the heritage gold ornament together with a further direction to replace the gold ornaments in respect of the rest amount of Rs. 23,700/- . The Appellant preferred an appeal before the State Consumer Disputes Redressal Commission, who directed the Appellant to replace the equivalent quantum of gold in addition to the payment of compensation of Rs. 1 lakh only to the Complainant for causing loss of the heritage gold ornaments for ever and harassment to the Complainant. The Petitioner therefore filed an application before the WB HC challenging the decision of the Commission, the petitioner has any grievance against the order of the State Commission in an appeal, there is a provision for preferring a revision before the National Commission in accordance with Section 21(b) of the Consumer Protection Act, 1986. Since there was an alternate efficacious remedy available by filing an appropriate application before the National Commission, in cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power under Article 227 by the High Court, the superintendence conferred under Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts/tribunals within the bounds of their authority and not for correcting mere errors. Thus the petition was rejected.

Constitutionality of Consumer Protection Regulations, 2005

**Surendra Mohan Arora v. HDFC Bank Ltd.**<sup>36</sup>

**Facts:** Appellant filed complaint before District Forum against Respondent no. 1/HDFC Bank Ltd for indulging in unfair trade practice on ground of failure to provide professional services to appellant resulting in prepayment of loan to Respondent no. 1 seeking to levy a penalty for pre-payment. District Forum passed order in favor of Appellant. Respondent no. 1 preferred appeal before State Commission and the same was dismissed. Revision petition was filed before National Consumer Disputes Redressal Commission (National Commission) National Commission set aside orders of District Forum and State Commission. Aggrieved Appellant filed review application before National Commission and the same was dismissed - Appellant filed writ petition before HC questioning vires of regn. 15 of the Regulations framed under the Act and the same was dismissed. Hence instant appeal was filed.

**Issue:** Whether Regulation 15 of the Consumer Protection Regulations, 2005 intra-vires of Section 22 of the Consumer Protection Act, 1986 Whether impugned order passed by HC was justified?

**Decision:** Supreme Court held that it did not find any dispute that Regulations had been framed in accordance with power conferred u/s. 30A of the Act on Commission, thereby affecting its right to frame Regulations. Regulations were framed in accordance with law. Court minutely gone through regulation 15(2) of the Regulations and found that power to deal with review applications lies with Commission. Procedure was to be adopted by National Commission, whether review petition would be decided after hearing parties orally or could be disposed of by way of circulation. SC did not find that any mischief was done by framing said Regulations u/s. 22 of the Act and could not be said to be ultra vires the said Act. There was no reason to believe that National Commission by enacting regulation 15 exceeded its jurisdiction or power vested in it u/s. 30A of the Act, as had been tried to be contended by

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36 AIR 2014 SC 2871.

Appellant. It appeared to SC for filing appeal by Appellant, was only curtail rights of National Commission to adopt procedure whether review Petitions would be decided after granting an opportunity of being heard to petitioner. From order of HC, SC found that no such request was made in application before National Commission for such hearing. HC correctly held that writ petition was misconceived and devoid of merit without even laying basic foundation for having sought an oral hearing of review application. No reason to interfere with order passed by HC. Appeal dismissed.

Documents lost from bank's custody

**Bank of India v. Mustafa Ibrahim Nadiadwala<sup>37</sup>**

**Facts:** The Respondent/Complainant, Mustafa Ibrahim Nadiadwala filed the consumer complaint saying that he was the co-owner of certain properties situated at village Nanegaon, Tehsil Pen, Distt. Raigad and that he availed term loan facility of Rs.10,48,000/- and for that purpose, the three co-owners including the Complainant, credited equitable mortgage in respect of the said properties in favour of the Appellant/Opposite Party by depositing two Conveyance Deeds with the said Bank. However, even after the said loan had been fully repaid to the Bank, the Bank did not return the original documents. The Complainant filed the consumer complaint, seeking directions to the Bank to return the original title deeds as well as pay a compensation of Rs. 99 lakhs towards mental agony harassment etc. and a further sum of Rs. 50,000/- as litigation cost. The complaint was partly allowed by the State Commission with cost which was quantified to Rs. 10,000/- to be paid to the Complainant. The Opponent Bank was directed to return the original title deeds of the Complainant within a period of two months from the date of the order, failing which the opponent was directed to pay Rs. 500/- per day to the Complainant till return of original title deeds. Also a sum of Rs. 9 lakhs was awarded to the Complainant as compensation on account of mental suffering. Being aggrieved against the said order of the

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37 2016 SCC OnLine NCDRC 2365.

State Commission, the Bank has filed the present first appeal before the National Commission.

**Issue:** Whether there was deficiency in service by the Bank?

**Decision:** In the memo of appeal the Bank has admitted that the said title deeds had been misplaced and hence, they were not in a position to return the same to the Complainant. The National Commission held that there has been deficiency in service on the part of the Bank towards the Complainant, as the title deeds had been lost from their custody only. The Bank is, therefore, liable to compensate the Complainant. This first appeal is, therefore, partly allowed and the order passed by the State Commission is ordered to be modified to the extent that the Complainants shall be entitled to a sum of Rs. 5 lakhs as compensation from the Bank for the loss of title deeds, along with a sum of Rs. 10,000/- as cost of litigation, as already awarded. The said amount shall be payable within a period of four weeks of passing this order, failing which the Bank shall be liable to pay interest @ 12% p.a. for the period of delay in making the said payment.

**CITI Bank N. A., Home Loan Department and another v. Ramesh Kalyan Durg and another<sup>38</sup>**

**Facts:** Mr. Ramesh Kalyan Durg and his wife, Mrs. Syamala Vellala took loan from the Citibank, the OPs in this case. They had given a security of their sale deed and link documents of the house. The said sale deeds along with link documents were misplaced. The bank made frantic efforts to search the said documents but to no avail. It clearly goes to show that the bank was terribly remiss in the discharge of its duty. The State Commission also held that the complaint was allowed and directing the Opposite Parties to pay compensation of Rs. 10,000/- for the negligence and deficiency in service in not returning the original documents and also to execute an indemnity bond for the value of the property of Rs. 10 lakhs to indemnify the loss in case the original documents are misused by any person by depositing the same to

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38 2016 SCC OnLine NCDRC 1904.

secure loan from any creditor or financier. The Opposite Parties are also directed to pay litigation costs of Rs. 5,000/-. Compliance to be made within four weeks from the date of receipt of the order.

**Issue:** Whether there was deficiency of service by the CITI bank in not returning and misplacing the other original documents of the customer?

**Decision:** The Complainant was given compensation in the sum of Rs. 1,00,000/- by demand draft in the name of Ramesh Kalyan Durg by the bank. Secondly, a public notice was also published by the bank in "Times of India" and "Eenadu" (State Edition). The amount of publication was paid by the bank. That was done within 15 days. Otherwise it would carry penalty of Rs. 100/- per day till the needful is done. Thirdly, the bank would get a certified copy of the sale deed and link documents with the help of the Complainants and all the expenses were borne by the bank. The Complainants would approach them within a period of 15 days and the needful would be done within 60 days otherwise penalty of Rs. 100/- per day shall be imposed upon the bank. Fourthly, if in future the Complainants suffer the loss due to loss of the said documents the bank will be liable to compensate the Complainant. The bank will lodge an FIR with the police station immediately. The appeal was disposed of.

Financier continues to be owner of goods which are subject of hire purchase agreement until hirer pays all installments

**Magma Fincorp Ltd. v. Rajesh Kumar Tiwari<sup>39</sup>**

**Facts:** Complainant purchased a Vehicle after entering into agreement hire-purchase with the financier. After making seven repayment instalments, Complainant defaulted and despite served with deman notice failed to clear the outstanding dues. The vehicle was repossessed by the financier and upon failure of complaint to make full repayment sold the Vehicle. Complainant questioned the ownership rights of financier and legality of act of repossession the vehicle.

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<sup>39</sup> 2020 SCC OnLine SC 795;

**Issues:**

1. Whether the Financier is the real owner of the vehicle which is the subject of a hire purchase agreement, and if so, whether there can be any impediment to the Financier, taking repossession of the vehicle, when the hirer does not make payment of instalments in terms of the hire purchase agreement?
2. Whether service of proper notice on the hirer is necessary for repossession of a vehicle which is the subject of a hire purchase agreement, and if so, what is the consequence of non-service of proper notice?

**Decision:** The Supreme Court held that the Complainant has only made a vague assertion that the action of the Financier in taking possession of the vehicle, admittedly for default in payment of instalments, and in not releasing the vehicle to the Complainant, in spite of the Complainant's assurance to the Financier to clear outstanding instalments and pay future instalments timely, amounts to an act of unfair trade practice and constitutes deficiency of service. It was held that no adverse inference could have been drawn against the Financier for not producing the Hire Purchase Agreement before the District Forum, when there was no allegation in the complaint of breach by the Financier of the Hire Purchase Agreement, in taking possession of the vehicle. It was further held that the District Forum did not exercise its power under Section 13(4)(ii) to call upon the Financier to produce the Hire Purchase Agreement. It was also held that even otherwise, the District Forum did not direct the Financier to produce the Hire Purchase Agreement. It was held that the Financier remains the owner of the vehicle taken by the Complainant on hire, on condition of option to purchase, upon payment of all hire instalments. It was held that the hire instalments are charges for use of the vehicle as also for the exercise of option to purchase the vehicle in future. It was held that the Financier being the owner of the vehicle, there was no obligation on the part of the Financier, to divulge details of the sale of that vehicle, and that too on its own, without being called upon to do so.

With respect to the 2<sup>nd</sup> issue, the SC held that the service of proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject matter of a Hire-Purchase Agreement, would depend on the terms and conditions of the Hire Purchase Agreement, some of which may stand modified by the course of conduct of the parties. If the hire purchase agreement provides for notice on the hirer before repossession, such notice would be mandatory. It was held that notice may also be necessary, if a requirement to give notice is implicit in the agreement from the course of conduct of the parties. In a case where the requirement to serve notice before repossession is implicit in the hire purchase agreement, non-service of proper notice would tantamount to deficiency of service for breach of the hire purchase agreement giving rise to a claim in damages. In conclusion, the SC allowed the appeal and the orders of the District Forum, State Commission and National Commission were set aside. The SC held that the Financier shall, however, pay a composite sum of Rs. 15,000/- to the Complainant towards damages for ‘deficiency’ in service and costs for omission to give the Complainant a proper notice before taking repossession of the vehicle.

#### Forceful repossession by bank

#### **HDFC Bank Ltd. v. Balwinder Singh<sup>40</sup>**

**Facts:** The complaint was of the bank, or its loan recovery agent, employing musclemen to take forcible repossession of the hypothecated vehicle and thus causing physical harassment and mental trauma to the Complainant. The Key word : Banking District Forum allowed the complaint and directed the bank to pay compensation of Rs. 4 lakh for repossessing the vehicle in this manner and reselling it to a third party. The State Commission confirmed the order in appeal. Dealing with the bank’s revision petition, the National Commission expressed shock that the bank had hired musclemen directly or through its recovery agents to recover the loan/repossess the vehicle. The Commission also referred to the State Commission’s order, which had

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<sup>40</sup> (III) 2009 CPJ 40 (NC).

observed that the alleged letter produced by the bank purporting to the Complainant voluntarily handing over possession of the vehicle was unreliable and that no notice was given to the Complainant at the stages of repossession and sale of the vehicle.

**Decision:** In dismissing the petition, the Commission relied upon its judgment in *Citicorp Maruti Finance Ltd. v. S Vijaylaxmi* [III (2007) CPJ 161 (NC)] where it had strongly deprecated such practices. The Commission dismissed the petition and awarded Rs. 25,000/- as exemplary costs in this case.

Forgery of fixed deposits

**Mumbai Metropolitan Region Development Authority, Through its Joint Project Director, Mumbai v. Dena Bank and others<sup>41</sup>**

**Facts:** The Complainant is a statutory authority set up under the Provisions of Mumbai Metropolitan Region Development Authority Act, 1974. The said Complainant invited quotations from Banks for investment of the surplus funds to the extent of Rs. 800 crores for a period of one year. In response to the said notice, the Opposite Party namely Dena Bank ('Bank') offered interest @ 9.99% per annum for a Fixed Deposit of Rs. 350 crores for a period of 366 days. Thereupon, the Complainant transferred a sum of Rs. 350 crores to the bank through RTGS on 19.03.2014. Vide letter dated 19.3.2014, alleged to have been sent by Fax, the bank was requested to issue Term Deposit Received for Rs. 350 crores. On 21.3.2014, an additional sum of Rs. 1.50 crores was transferred by the Complainant to the Bank through RTGS and the bank was requested to issue the Fixed Deposit Receipt in the name of the Complainant. The said letter dated 21.3.2014 is also alleged to have been sent by Fax. The bank issued 45 Fixed Deposit Receipts. The Complainant received a letter dated 05.7.2014 from the Sr. Inspector of Police, EOW, Unit-I, CB,CID, Mumbai informing it that a fraud had been committed in respect of its Fixed Deposits with the bank and an amount of Rs. 45 crores had been siphoned off. When the Complainant contacted the

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<sup>41</sup> 2016 SCC OnLine SCC 249.

bank to ascertain the status of the said Fixed Deposit Receipts, it was informed that the said Fixed Deposit Receipts were not original. Vide letter dated 10.7.2014, the bank informed the Complainant that they had found that an overdraft account had been opened in its name and in the said overdraft account there was an outstanding of Rs. 45.23 crores against the fixed deposits. It was further stated in the said letter dated 10.7.2014, that the original Fixed Deposit Receipts duly discharged by the Complainant were held by the Branch and the matter of creation of overdraft had been referred to the CBI for investigation. Vide letter dated 15.7.2014, the Bank forwarded the copies of the documents relating to the opening of the overdraft account and grant of the loan against the Fixed Deposit Receipts to the Complainant. The Complainant reiterated to the bank that it had not applied for grant of any overdraft facility nor had it collected the cheque book from the bank. The bank was also asked to authenticate the Fixed Deposit Receipts which were in the possession of the Complainant. The Complainant handed over all the 45 Fixed Deposit Receipts of Rs. 351.50 crores to the bank, vide letter dated 28.11.2014. On 02.1.2015, the bank informed the Complainant that the signature on the said Fixed Deposit Receipts did not match with the signature of the bank officer. On maturity of the Fixed Deposit Receipts, the bank has refused to pay the proceeds to the Complainant on the ground that the Fixed Deposit Receipts in the custody of the Complainant were forged documents, whereas the bank required genuine Fixed Deposit Receipts issued by it, before it could pay the maturity amount of the Fixed Deposits to the Complainant. The bank also sought to adjust from the proceeds of the Fixed Deposits, the amount outstanding in the overdraft account opened in the name of the Complainant MMRDA. Being aggrieved, the Complainant is before National Commission, seeking relief.

**Issue:** Whether there was deficiency of service by the DENA bank?

**Decision:** It was held that there was deficiency in service by the bank. The Opposite Party, Dena Bank was directed to pay the entire principal amount of Rs. 351.50 crores to the Complainant along with the interest applicable to

the said Fixed Deposit Receipts from time to time; It was also directed to pay the principal amount of Rs. 1,25,82,82,737/- to the Complainant along with the interest applicable to the said Fixed Deposit Receipts from time to time; the payment in terms of this order shall be made within six weeks from today; the fixed deposits made by the Complainants with the Opposite Party shall stand discharged and paid, on payment in terms of this order; the forged Fixed Deposit Receipts available with the Complainants shall be delivered to the opposite party, at the time of payment in terms of this order; the parties shall bear their respective costs of the complaint.

Limitation of complaints

**State Bank of India v. B. S. Agricultural Industries<sup>42</sup>**

**Facts:** The Complainant filed a complaint against the Bank on May 5, 1997 claiming an amount of Rs. 2,47,154/- for deficiency in service along with interest @ 12% p.a., litigation expenses and compensation. The Complainant averred; that it has been carrying on business of manufacturing and supply of engines and pump sets all over India through their dealers and distributors; that it sent to the Bank seven bills amounting to Rs. 2,47,154/- drawn on M/s Unique Agro Service, P.O. Heria, District Midnapore (W.B.) together with GR's of transporters for collection of payment and remittance of proceeds to the Complainant; that it instructed the Bank to deliver the bills and GR's against payment to the drawee (M/s Unique Agro Service) and charge interest @ 24% per annum from May 22, 1994 (if the documents are not retired by the drawee from the Bank within 30 days of the presentation of the bills); that the Bank was also instructed to return the bills and GR's if the drawee did not retire the bills within 45 days of the presentation of the bills i.e. upto June 7, 1994 and that despite repeated letters dated March 15, 1995, May 4, 1996, March 1, 1997 and March 20, 1997 and legal notice dated April 3, 1997, the Bank has neither sent the amount of

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44 AIR 2009 SC 2210.

Rs. 2,47,154/- nor returned the said bills and GR's necessitating the complaint before the District Forum, Agra. The Complainant admitted in the complaint that vide letter dated March 28, 1995, the Bank informed it that they have returned the bills and GR's to B.M Konar (Complainant's sales manager) on May 10, 1994. However, according to the Complainant on May 4, 1996, a letter was sent to the Bank asking them under what authority they delivered the documents to B.M. Konar and the Bank was asked to send either a demand draft for Rs. 2,47,154/- together with interest or return the documents without further delay. The Complainant is stated to have again sent the reminder to the Bank on March 1, 1997 to which Bank asked the Complainant to arrange to forward a copy of the letter dated May 4, 1996 for necessary action. The bank resisted the complaint on diverse grounds, *inter alia*, (i) that the Complainant was not a consumer within the meaning of Consumer Protection Act, 1986 (for short, 'Act, 1986'); (ii) that the complaint was clearly time barred and beyond the period of limitation; (iii) that the bills and GR's were returned to B.M. Konar, the Sales Manager of the Complainant firm; (iv) that the drawee ( M/s Unique Agro Service) had accepted the liability of payment of the bills to the Complainant vide letter dated May 11, 1994 and also deposited a cheque to the Complainant in that regard.

**Issue:** Whether the complaint filed by the complainant will be allowed?

**Decision:** The Complainant filed a complaint against State Bank of India, which was allowed. On appeal, the Supreme Court observed that the Forum had ignored the specific plea of the Bank as to the issue of limitation. The Court held that Section 24A of the Consumer Protection Act, 1986 which laid down a limitation period of 2 years for the filing of complaints, was a mandatory requirement which had to be considered by the consumer for a before admitting a complaint, although it could condone the delay in filing complaints if sufficient cause was shown. In this case, the Court dismissed the complaint as it had been filed beyond the period of limitation.

Mortgage by deposit of title deeds

**Canara Bank Thrissur v. R. S. Vasan<sup>43</sup>**

**Facts:** The case revolves around the question as to whether the Complainant ad stood guarantors/security for loan Shri C. K. Prabhakaranand had mortgaged his Fixed Deposit Receipts as security for the said loan. Shri R. S. Vasan introduced one, Shri C. K. Prabhakaran to the Canara Bank, Opposite Party on 22.6.1996 and the bank extended an overdraft facility to Shri C. K. Prabhakaran in the sum of Rs. 1,00,000/ against immovable property to the extent of 12 1/2centsi n Kainoor Village owned by Shri Vilasini, the wife of Shri C. K. Prabhakaran. The Complainant had no intention to be a guarantor or a surety for the said overdraft facility. However, the term deposit receipt of the Complainant was with the Opposite Party bank in safe custody and the Complainant was made to sign some blank papers. When Prabhakaran expired on 7.6.2001, the bank informed the Complainant that the overdraft facility had been given on Complainant's security and a sum of Rs. 1,36,135.50 would be liquidated against his term deposit to which the Complainant denied his liability. The District forum and State Commission have decided the case in favour of the Complainant and the bank was directed to pay the Complainant a sum of Rs. 1,48,698/-. The amount adjusted towards the dues with interest @12% pa. From 2.1.2004 till its realization and also to pay Rs. 1,000/- as costs within two months from the date of receipt of a copy of that order. The State Commission dismissed the appeal with costs of Rs. 5,000/-.

**Issue:** Whether the bank has acted fraudulently by proceeding against the Complainant and taking no action against the borrower and his family?

**Decision:** It is difficult to fathom as to why the Complainant deposited the said FDRs with the bank. The deposit of the FDR clearly goes to show that it was a case of mortgage by deposit of title deed. There is no such thing to obtain a bond from the surety otherwise; the concept of mortgage by title

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43 2014 SCC OnLine NCDRC 337.

deed shall stand defeated. Moreover, the Complainant signed the blank papers at his own peril as the Complainant signed the blank papers, if any, with his open eyes and on his own volition. Even if he has signed the blank papers, he did it at his own peril. The onus lies on the Complainant to prove that he/she was made to sign the blank papers fraudulently or under coercion. Also, it is well settled that it is the choice of the bank to recover the money either from the guarantor or the borrower. It is abhorrent from the principles of law to say that the Bank must first of all recover the money from the borrower and thereafter it can proceed against the guarantor. The order passed by both the fora below was therefore set aside and the complaint dismissed.

Negligence regarding hypothecated assets

**Canara Bank v. Leatheroid Plastics Pvt. Ltd.<sup>44</sup>**

**Facts:** Canara Bank had extended credit facilities to a company named Leatheroid Plastics Pvt. Ltd. The credit facilities involved restructuring of past debt--repayment. For this purpose, a deed of hypothecation was executed. Under the respective deeds/agreements, it was the Company's obligation to keep the hypothecated assets insured but the bank retained the liberty to obtain insurance coverage of such assets. The bank exercised the option of effecting the policy and debited the premium from the Company's account. The entire set of hypothecated assets, however, was not covered by the policy. There was a fire in the premises of the Company which caused damage to their stocks and machineries. The Company under those circumstances became liable, as part of their debt repayment obligation, for the price of such uncovered hypothecated assets damaged by fire. The Company filed a consumer complaint founded on loss on account of portion of the assets left uncovered in the insurance policy.

**Issue:** Whether there was any deficiency of service on the part of the bank in not covering the whole set hypothecated assets under the insurance policy?

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44 2020 SCC OnLine SC 465.

**Decision:** The SC held that the Complainant had suffered loss because of the inaction and negligence on the part of the Bank and this constituted deficiency of service. Any loss arising out of such deficiency was compensable under the COPRA 1986. Once the bank exercised the liberty to effect the insurance, it was implicit that such insurance ought to have covered the entire set of hypothecated assets, against which the credit facilities were extended. If the bank had exercised liberty to effect insurance, it was their duty to take out policies covering the entire set of hypothecated assets. It would constitute part of services the bank were rendering to the borrower.

No liability on bank in the absence of any evidence showing deposition of educational certificates for taking a loan

**Allahabad Bank v. Subhash Kumar Mittal<sup>45</sup>**

**Facts:** Respondent herein had taken a loan from the Petitioner bank under Pradhan Mantri Rozgar Yojana (PMRY) Scheme in 1984. He stated that he had deposited his educational certificates with the bank on the assurance that after repayment of the loan, the said documents would be returned to him. After repayment of the loan, Respondent approached the bank for return of his original documents; but the same were not returned to him. Being aggrieved, he approached District Forum by way of a consumer complaint. District Forum allowed the complaint, and the bank's appeal against the said order was dismissed. Thus, the bank approached filed the instant revision petition.

**Issue:** Whether the original matriculation documents were deposited by the Complainant with the Petitioner bank or not?

**Decision:** The Commission observed that no documentary proof of the alleged deposit had been filed by the Respondent. Petitioner, being a nationalized bank and Respondent being an educated person, it was difficult to accept that he deposited such important documents with the bank,

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45 2019 SCC OnLine NCDRC 25.

without even taking an acknowledgment from it. Moreover, no evidence had been led by the Respondent to prove that the submission of such documents was necessary under rules of the bank or PMRY Scheme. The Commission held that the view taken by the fora below is perverse in the sense that no prudent person acting on the material produced by the parties could have come to the conclusion, which the fora below had reached in this case. The impugned orders therefore, cannot be sustained and are therefore set aside holding a national bank liable for returning educational certificates of the Complainant.

Non-disbursement of balance instalments of loan

**Managing Director, Maharashtra State Financial Corporation and Ors.  
v. Sanjay Shankarsa Mamarde<sup>46</sup>**

**Facts:** The Complainant's loan proposal was approved by the Executive Committee of the Corporation on 27<sup>th</sup> May, 1992, sanctioning a term loan of Rs. 30 lakhs to the Complainant. Accordingly, a sanction letter along with terms and conditions of the loan was issued to the Complainant on 2<sup>nd</sup> July, 1992. The material conditions of loan were as follows:

- (a) The loan shall be utilised exclusively for the project as per the scheme approved by MSFC and the specific purposes for which the same is sanctioned.
- (b) The loan shall be disbursed by MSFC in one lump sum or in instalments as and when the said purposes are fulfilled or at the entire discretion of the Corporation or may be refused if in the opinion of the Corporation, the purpose for which the full loan has been sanctioned are not properly fulfilled.
- (c) The loan will be disbursed either for acquisition of fixed assets under the said scheme or for reimbursement of funds utilised for acquisition of fixed assets taken for security under the said scheme.

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<sup>46</sup> AIR 2010 SC 3534.

- (d) A minimum margin of 55% over all on fixed assets shall be maintained during the currency of the loan.
- (e) The loan shall be repaid within a period of 8 years by 13 half yearly instalments commencing from the end of 2<sup>nd</sup> year of disbursement of the first instalment of the loan. The amount of each instalment repayable being about 1/13 of the amount sanctioned regardless of the amount disbursed.
- (f) The interest shall be charged @ 22% p.a. and the same shall be payable quarterly on the total loan and the same shall be charged from the date of disbursement of first instalment of the loan.

Additionally, it was also agreed that the loan amount would be disbursed depending on the progress of the work in accordance with a set time schedule. The progress of the construction work was required to be evaluated by the valuer approved by the Corporation. The said conditions were accepted by the complainant.

**Issue:** Whether the bank was right in non-disbursement of balance instalments of loan?

**Decision:** The Supreme Court held the bank was right in non-disbursement of balance instalments of loan. Upholding *U.P. Financial Corporation and Ors. v. Naini Oxygen & Acetylene Gas Ltd.*, the court held that “a Corporation being an independent autonomous statutory body ....is free to act according to its own right.” The court’s reasoning is in line with the lassie faire philosophy. It also ensures enough incentive for corporate houses to set up and function without excessive legal entanglements strict interpretation of the statute. However, it leaves no recourse for the company for defect and deficiency except in contract law, which defeats the objective of the Consumer Protection Act. For a strong liability regime to be outlined, the remedy should be available to the final consumer (whoever they might be).

Refusal to encash cheque

**Prakash Chimanlal Sheth v. HDFC Bank limited, Maharashtra<sup>47</sup>**

**Facts:** The Petitioner filed the consumer complaint before concerned District Forum alleging deficiency in service on part of bank in denying to encash cheque presented by Petitioner as he was in need of Rs. 3 lakhs to be deposited in the hospital for the treatment of his ailing mother. The cheque was given to Complainant from his nephew Chirag Natvarlal Sheth. District Forum dismissed complaint on technical ground that Complainant not being an account holder is not consumer. State Commission dismissed complaint and instead of giving a clear finding whether the Complainant is consumer or not held that bank was justified in refusing the honour of cheque because of failure of the Complainant to produce photo identity which is as per terms of RBI. So instant petition filed before NCDRC.

**Issue:** Whether deficiency in service on part of bank is proved?

**Decision:** NCDRC held that no doubt Complainant had not furnished his ID but fact remains that admittedly not only cashier but also Bank Manager separately rang up account holder on his mobile number who verified having issued the subject cheque and gave clearance for encashment. Bank officials however declined to encash the cheque. This is clear deficiency in the service. The National Commission considered this case of unnecessary harassment and humiliation and directed the bank to pay Rs. 10,000/- as compensation to the Complainant.

Refusal to encash FDR

**Pishora Singh v. Bank of Punjab and Ors<sup>48</sup>**

**Facts:** The Appellant Mr. Pishora Singh had obtained two FDRs for Rs. 1,00,000/- each on 24/02/1996. Thereafter, he also obtained another

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<sup>47</sup> 2017 SCC OnLine NCDRC 659.

<sup>48</sup> AIR 2017 SC 2696.

FDR on 8/03/1996 for an amount of Rs. 2,00,000/- . The first set of FDRs obtained by the Appellant on 24/2/1996 was renewed by the Respondent-Bank on 10/04/1996 and on 7/06/1996. When the Appellant went to encash two FDRs that were originally issued on 24/02/1996 as well as the FDR issued on 8/03/1996, the Respondent-Bank refused to encash the second FDR for Rs. 2,00,000/- on the ground that it was issued to the Appellant without any consideration. There is no dispute with regard to the encashment of the first set of two FDRs issued originally to the Appellant on 24/02/1996. The Complainant preferred a complaint before the District Consumer Forum with regard to the failure of the Respondent-Bank to encash the FDR for Rs. 2,00,000/- issued on 8/03/1996. District Consumer Forum on considering the materials and evidence on record, held that the Appellant was entitled to encash the FDR with interest. Feeling aggrieved, the Respondent-Bank preferred an appeal before the State Commission, where it held that the Appellant was not entitled for encashment of the said FDR. The Appellant preferred a revision petition before the National Commission (NCDRC) against the order of the State Commission and the same was dismissed by NCDRC. Respondent-Bank contends that the FDR dated 8th March, 1996 was declined to encash because it was issued by mistake. It was stated that no action was taken against the defaulting officer for having allegedly issued FDR on 8/03/1996 without any consideration. It was further contended by the Respondent-Bank that the Appellant had only Rs. 2,00,000/- in his account and that amount was adjusted against the first set of FDRs issued on 24/02/1996 and that the Appellant did not have any amount to the extent of Rs. 2,00,000/- which would enable the Bank to issue the second FDR on 8<sup>th</sup> March, 1996.

**Issue:** Whether bank can refuse to encash FDR allegedly issued without consideration?

**Decision:** Supreme Court held that the Appellant cannot be expected to produce anything more than what is given to him by the Bank i.e. FDR receipt itself. Assuming the FDR dated 8/03/1996 was issued to the

Appellant fraudulently, it was all the more obligatory on the Respondent-Bank to have taken action against its employees. Appeal was allowed. Orders passed by the State Commission as well as the National Commission were set aside and order of the District commission was restored. Hon'ble Supreme Court directed to implement the order passed by the District Forum within a period of six weeks from the date of this judgement.

Sale of car by bank without pre-sale notice

**Natarajan Bohidar v. Citibank N.A<sup>49</sup>**

**Facts:** The Complainant obtained a loan in the sum of Rs. 2,93,025/- from City Bank, the Opposite Party, to purchase a car, in the year 2000. The loan was re-payable in 59 EMIs of Rs. 7,089/- each, commencing from Dec.1, 2001 to Oct. 2005. The Complainant made regular EMI payments in the sum of Rs. 7,089/- per month, till September, 2004 by ECS mode, through his Savings Bank account. Thereafter, from October-November, 2004, the Complainant preferred for the repayment of the instalments, by cheques. He revoked the ECS mandate from ABN AMRO Bank and intimated the OP that it should not make further demands of ECS transfer on its banker to avoid duplication of payments. Nine cheques were given by the Complainant to the Opposite Party, at the time of signing the Loan Agreement. The OP did not use the cheques, but again, made ECS demand, which was not honoured by the ABN AMRO Bank. Thereafter, the OP issued him a notice for default in the agreed terms. Hence, the Complainant paid the amount by cheque for 4 instalments which was accepted by OP. Out of 59 instalments, only 5 remained to be paid. On 15.06.2005, when the Complainant was on his way, 4-5 persons forcibly took the car from his possession. The Complainant informed the matter to the police. The OP sold the car, without a pre-sale notice and after crediting the proceeds in his account, raised an outstanding demand of Rs. 5,000/-. It is alleged that OP sent a pre-sale notice, the next day of re-possession and also a notice was sent to clear the

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<sup>49</sup> 2014 SCC OnLine NCDRC 279.

outstanding dues, within 7 days. The OP actually sold the car for Rs. 50,000/- and after crediting the proceeds in his account, raised an outstanding demand of Rs. 5,000/-. The Complainant filed a complaint, alleging deficiency of service, in repossessing of car when only 4-5 instalments, out of 59, remained unpaid, before the State Consumer Disputes Redressal Commission (in short, 'State Commission') and claimed compensation of Rs. 30,00,000/-. The State Commission while observing that the claim was exaggerated just to make it come within the purview of the jurisdiction of the State Commission, remanded the complaint back to the District Forum to treat the claim as for Rs. 20,00,000/-. The District Forum partly allowed the complaint and directed the OP to pay Rs. 3,00,000/- as damages for loss and harassment caused to him and also awarded Rs. 25,000/- towards litigation charges. Aggrieved by the quantum of award made by District Forum, the complainant preferred First Appeal to the State Commission, which was dismissed. Hence, this revision petition was filed at the National Commission.

**Decision:** The Commission held that the revision petition was partly allowed and modify the order of for and the Opposite Party was directed to pay Rs. 3,00,000/- to the Complainant, with interest @ 6% per annum, from 15.06.2005, the date of re-possession of the car. OP is further directed to pay a sum of Rs. 40,000/- towards mental agony and Rs.10,000/- as a cost of litigation.

Taking delivery without depositing the price of goods with the Bank

**Virender Khullar v. American Consolidation Services Ltd. and Ors<sup>50</sup>**

**Facts:** The Complainants entrusted consignments containing men's wearing apparels in December 1994 to Opposite Party American Consolidation Services Ltd., who also issued the cargo receipts. As per the cargo receipts so issued, the consignments were to the order of Central Fidelity Bank. The Opposite Party on its part handed over the consignments to M/s. Hoeg Lines, Lief Hoegh & Company, A/S Oslo, Norway/M/s. American President Lines

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50 AIR 2016 SC 3798.

Limited, for delivery of the consignments at the port of destination. It is alleged that in the Bill of Lading issued by the shipping carriers, name of consignee was changed from Central Fidelity Bank to Coronet Group Inc. besides there being several other changes in the name and description of the shipper as Cavalier Shipping Company. When payment was not received till March, 1995, the Complainants made enquiry about the consignments. After servicing legal notice, Virender Khullar filed a complaint for an amount of Rs. 35,31,601.15/- and Girish Chander filed a complaint for an amount of Rs. 29,17,844.76/- before NCDRC, New Delhi. Initially the complaints were filed only as against American Consolidation Services Ltd. (ACS). The Opposite Party contested the complaints and pleaded that they received the Complainants' goods on behalf of the buyer/consignee, i.e. Zip Code Inc. which was part of Coronet Group Inc. as its agent. It is further pleaded that there was no payment made by the Complainants for the service provided by the Opposite Party, neither there was any contract between the Complainants and Opposite Party for shipment of the goods. The receipt, custody and forwarding of the goods of the Complainants were governed by the provisions of bailment agreement as mentioned in the cargo receipts. The bailment agreement provided that from and after the delivery by Opposite Party to a carrier in accordance with the instructions of the consignee or other cargo owner, the sole responsibility and liability for the care, custody, carriage and delivery of goods was that of the concerned carrier. The Opposite Party was under no liability whatsoever in respect of any failure on the part of the consignee or any other party. According to the Opposite Party, the Complainants' claim, if any, can lie only as against the principal, i.e. buyer/consignee who appears to have not made payment to the Complainants for the value of the cargo. The National Commission accepting both the claims of the Complainant directed the opposite party to pay the amount of Rs. 20,82908.40/- and Rs. 15,27,461.76/- with interest to Virender Khullar and Girish Chander respectively. The above order was challenged by the Opposite Party before the Hon'ble Supreme Court. The Court set aside the above judgement and the matter was remanded to the National Commission with liberty to the claimants to implead the consignee as well as the carrier in

their claim petitions. The case was decided afresh by the National Commission. It has been held by National Commission that it is only Zip Code, the intermediary consignee of the cartons in question mentioned in cargo slips, who received the delivery of the consignments without making payment to the bank or the Complainants, is liable to pay the compensation to the Complainants, and accordingly directed them to make the payment of Rs. 20,82,902.40/- in favour of Virender Khullar and Rs. 15,25,461.76 in favour of Girish Chander, with interest at the rate of 12% per annum with effect from April 01, 1995. The order was not challenged by the Opposite Party, rather by the Complainants as the other Opposite Party were held not liable.

**Issue:** Whether the agent of the consignee is liable to make the loss for the non-payment of goods?

**Decision:** In appeal, the Supreme Court found that there was no infirmity in the impugned order. The appeal was dismissed. Zip Code which is subsidiary to Group Incorporation, the consignee named in the cargo slips, is the only party which can be held liable for taking delivery without depositing the price of the goods with the Bank.

Unnecessary increase in rate of interest

**Neelam Pansari & Another v. C.G.M State Bank of India & Another<sup>51</sup>**

**Facts:** This appeal was filed by the Complainant before NCDRC against the order passed by State Commission, Bihar. The Complainant had given premises to the bank on lease for a period of 5 years. Against this, the Complainant had obtained loan of Rs. 15 lakh from the bank on the date before November 1990, which carried interest @ 15% p.a. The loan was to be repaid by depositing 87% of the rental earned each month. When the lease expired, it was renewed for another five years, but the bank hiked the interest rate on the loan to 16% p.a. compounded quarterly. The Complainant asked bank against such increase in rate. The bank replied that the issue had

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51 2017 SCC OnLine NCDRC 959.

been referred to RBI and a decision would soon be taken. Meanwhile, the Complainant kept paying interest at the increased rate. He later came across a circular issued by RBI which stated that there would be no change in the interest rate of loans sanctioned prior to November 16, 1990. The Complainant informed about RBI circular to the bank but they did not give any response and so sought clarification from RBI and RBI confirmed the same. The Complainant pointed out that he had been overcharged Rs. 3,01,599/- due to the increase in the interest rate and approached banking ombudsman who partly upheld his contention. Being aggrieved by the decision of the ombudsman he approached Bihar State Commission. State Commission upheld the bank's contention that while renewing the lease they were entitled to revise the interest rate and also to calculate the interest on compound basis quarterly. Being aggrieved with State Commission's order an appeal was filed before NCDRC.

**Issue:** Whether there is deficiency in service on part of bank?

**Decision:** NCDRC held SBI liable for deficiency in service, and ordered it to refund the excess amount of Rs. 3,01,599/- along with simple interest of 9% p.a. together with Rs. 10,000/- towards litigation costs within 4 weeks from the date of receipt of the order, failing to which it shall carry interest rate of 12% p.a for the same period.

Whether a stock broker is a consumer under Consumer Protection Act, 1986

**Shrikant G. Mantri v. Punjab National Bank<sup>52</sup>**

**Facts:** The Complainant who was working as Stock Broker in his capacity as member of Mumbai Stock Exchange opened an account with the opposite party bank and took overdraft facility to expand his business profits. The overdraft facility was increased at the instance of the Complainant from initial Rupees one crore to Rupees six crores against the security including pledging of shares.

**Issue:** Can the stock broker invoke the jurisdiction of the Consumer Fora for raising a consumer dispute?

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52 Consumer Case No. CC/55/2006 NCDRC.

**Decision:** The National Commission observed that as the Complainant had availed of the services of the Opposite Party bank i.e. overdraft facility against the security of shares with the intention to expand his business and increase his business profits. Therefore, it cannot be said that Complainant had availed of services of the Opposite Party exclusively for the purpose of earning his livelihood by way of self-employment. The Commission came to the conclusion that the Complainant is not a consumer as envisaged under Section 2 (1)(d) of the Act because he had availed of the services of the Opposite Party bank for commercial purpose. As the Complainant is not a consumer, he cannot invoke jurisdiction of Consumer Fora by raising a consumer dispute. Thus, the instant complaint does not fall within the jurisdiction of this Commission. Complaint is accordingly dismissed.

Whether a trust is a consumer under Consumer Protection Act, 1986

**Pratibha Pratisthan and Ors. v. Manager, Canara Bank and Ors<sup>53</sup>**

**Facts:** A very short question has arisen, namely, whether a complaint can be filed by a Trust under the provisions of the Consumer Protection Act, 1986. The National Consumer Disputes Redressal Commission answered the question in the negative. Hence, an appeal was made to the Supreme Court of India.

**Issue:** Whether complaint can be filed by Trust under provisions of Consumer Protection Act 1986?

**Decision:** On a plain and simple reading of all the above provisions of the Act it is clear that a Trust is not a person and therefore not a consumer. Consequently, it cannot be a Complainant and cannot file a consumer dispute under the provisions of the Act. Thus, the National Commission was quite right in holding that the complaint filed by the Appellant Trust was not maintainable.

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53 AIR 2017 SC 1303.

## DRUGS AND COSMETICS

As per official reports and statistics, the pharmaceutical market in India was worth USD 33 billion in 2017<sup>54</sup> and it is expected to reach USD 55 billion by 2020.<sup>55</sup> With initiatives like Pharma Vision 2020 which aim at making India the most attractive destination for development of new drugs<sup>56</sup>, it is clear that the pharmaceutical sector will only continue to grow in size.

### CONSUMER ISSUES

Drugs are consumed for the purposes of medical treatment. Accordingly, it is necessary that the process of development and approval of drugs for human consumption should ensure that the drugs are of suitable quality and do not have any negative effects. Further, the prices of the drugs need to be controlled so everyone has access to healthcare. In this light, the problems faced by consumers are<sup>57</sup>:

1. Overcharging of drugs.
2. Selling of untested drugs/drugs of poor quality.
3. Overcharging of medical devices.
4. False/misleading information about the drug.
5. Refusal to sell drugs.
6. Shortage or non-availability of drugs.

54 IBEF, 'Indian Pharmaceutical Industry' <<https://www.ibef.org/industry/pharmaceutical-india.aspx>> accessed 14 July 2019.

55 McKinsey & Company, 'India Pharma 2020: Propelling access and acceptance, realising true potential' <<http://online.wsj.com/public/resources/documents/McKinseyPharma2020ExecutiveSummary.pdf>> accessed 14 July 2019.

56 Ranjana Smetacek, 'Will India achieve pharma vision 2020?' *The Economic Times* (31 December 2013) <<https://m.economictimes.com/opinion/et-commentary/will-india-achieve-pharma-vision-2020/articleshow/28159936.cms>> accessed 14 July 2019.

## CENTRAL DRUGS STANDARD CONTROL ORGANISATION

The CDSCO is the regulatory body responsible for approval of drugs, conducting clinical trials, laying down the standards for quality of drugs and improving accessibility to drugs.<sup>58</sup> For this purpose, the Drugs and Cosmetics Act, 1940 provides for establishment of the Drugs Technical Advisory Board for administration of technical matters<sup>59</sup>, Central Drugs Laboratory for testing of drugs<sup>60</sup> and the Drugs Consultative Committee for uniform implementation of the act.<sup>61</sup>

In order to give effect to the provisions of the act, there are numerous legislations and regulatory mechanisms in place:

1. The Drugs and Cosmetics Rules, 1945 lay down the procedures for sampling, analysis, import, approval, distribution of drugs etc.<sup>62</sup>
2. The Drug Price Control Order, 2013 lays down the method for calculation of price of drugs and provides for seizure of drugs in case of non-compliance.<sup>63</sup>
3. The Pharma Jan Samadhan scheme was launched by the Union Ministry of Chemicals & Fertilizers. It provides an online facility for consumers to redress grievances about over-pricing, shortage or unavailability of medicines and refusal to sell etc.<sup>64</sup>

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57 Ministry of Chemicals & Fertilizers, 'Annual Report: 2017-18' 102 <<http://pharmaceuticals.gov.in/sites/default/files/Annual%20Report%202017-18.pdf>> accessed 14 July 2019.

58 Central Drugs Standard Control Organization <<https://cdsco.gov.in/opencms/opencms/en/Home/>> accessed 14 July 2019.

59 Drugs and Cosmetics Act 1940, s 5.

60 Drugs and Cosmetics Act 1940, s 6.

61 Drugs and Cosmetics Act 1940, s 7.

62 Drugs and Cosmetics Rules 1945.

63 Drug Price Control Order 2013.

64 Press Information Bureau, 'Union Minister of Chemicals & Fertilizers Shri Ananth Kumar launches 'Pharma Jan Samadhan' scheme' (12 March 2015) <<http://pib.nic.in/newsuite/PrintRelease.aspx?relid=116882>> accessed 14 July 2019.

## CASES

### Liability of manufacturer

#### **Dinesh B. Patel v. State of Gujarat<sup>65</sup>**

**Facts:** The case arose out of the medicines which were sold by M/s. Denis Chemical Lab. Ltd., Chhatral, Ta. Kalol, District Gandhinagar, while testing the some of the medicines in the laboratory the medicines were found to have containing fungus there for the case was filed before the district and then an SPl has been filed against the managing director and on behalf of the company as in the section 34 of the act says that any offence done by the company the whole company and the people relation to the company will be liable to it.

**Issue:** Whether the manufacturer held liable?

**Decision:** The Honourable Court said that after further reference of the cases the court said that “Under the peculiar circumstances of this case and realizing the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint. Mr. Raichura contended that as per the settled law by this Court in complaints under Section 138 of the Negotiable Instruments Act against company and directors also specific averment about the active role of directors in running the company has to be made, failing which the directors cannot be proceeded against. Same logic should apply even in the present case. We cannot agree. Firstly, the language of Section 34(2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act. Secondly, here we are dealing with the offence which has the direct impact on the public health. We, therefore, would choose not to interfere with the order of the High Court. It will be open for the directors to show to the Trial Court that they had nothing to do with the manufacture process and, therefore, they should not be held liable under Section 34(2) of the Act”. With these observations, the appeal stands dismissed.

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65 (2011) 11 SCC 125.

## E-COMMERCE SECTOR

As per the official statistics and reports, the e-commerce sector in India was worth USD 38.5 billion in 2017 and is expected to be worth about USD 200 billion in 2020.<sup>66</sup> This is due to the increase in the number of people who have internet – there were over 566 million internet users at the end of 2018 and the number is expected to be over 627 million at the end of 2019.<sup>67</sup> Multiple government initiatives, such as Digital India<sup>68</sup>, the Bharat Net project<sup>69</sup>, the Internet Saathi project<sup>70</sup> etc. are also responsible for increasing the size of the e-commerce market.

### CONSUMER ISSUES

Although a lot of e-commerce companies have grievance redressal mechanisms, data released by the Ministry of Consumer Affairs shows that there were around 78,088 complaints made against e-commerce companies in 2018<sup>71</sup>, a number which grew by 1400% from 5204 complaints in 2013-14.<sup>72</sup> Accordingly, the UNCTAD presented the problems faced by consumers in e-commerce<sup>73</sup>:

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66 IBEF, ‘E-commerce Industry in India’ <<https://www.ibef.org/industry/e-commerce.aspx>>.

67 Ibid.

68 Digitize India Platform <<https://digitizeindia.gov.in/>> accessed 14 July 2019.

69 Bharat Broadband Network Limited <<http://bbnl.nic.in/>> accessed 14 July 2019.

70 Internet Saathi <<http://internetsaathiindia.org/>> accessed 14 July 2019.

71 Rajya Sabha, ‘Answer to Unstarred Question No. 384’ Ministry of Consumer Affairs, Food and Public Distribution <<https://164.100.158.235/question/annex/246/Au384.pdf>> accessed 14 July 2019.

72 Rashi Varshney, ‘Consumer complaints against e-commerce companies grew 42% in a year’ *Medianama* (27 July 2018) <<https://www.medianama.com/2018/07/223-consumer-complaints-against-e-commerce-companies-grew-42-in-a-year/>> accessed 14 July 2019.

73 UNCTAD (2017), ‘Consumer Protection in electronic commerce’ TD/B/C.I/CPLP/7 <[https://unctad.org/meetings/en/SessionalDocuments/cicplpd7\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf)> accessed 14 July 2019.

1. False/misleading information about the product.
2. Delays in receiving or return of product.
3. Difficulties in payment and refunds.
4. Irreversibility of transactions.
5. Violation of data privacy.
6. Numerous instances of fraud, identity theft and scams.
7. Lack of after-service customer support and care.
8. Lack of information on consumer rights and dispute resolution mechanism.
9. Unclear pricing mechanism and numerous surcharges.

### **DRAFT NATIONAL E-COMMERCE POLICY, 2019**

Although there is no regulatory body for e-commerce in India, the Draft National E-Commerce Policy, 2019 does provide for protection of the rights of consumers:

1. Chapter F of Part III of the policy mandates any e-commerce site or application through which sale and purchase take place to display the phone number and email address for consumer grievances.<sup>74</sup>
2. Chapter F of Part IV of the policy lays down the necessity of having a consumer protection framework specifically to deal with e-commerce disputes. For this purpose, a system for the online redressal of grievances which includes payment of compensation online is recommended.<sup>75</sup>

### **CASES**

#### Authorisation of disputed transaction

#### **HDFC Bank Limited and Ors. v. Hemant Narayan Devande<sup>76</sup>**

**Facts:** Respondent/Complainant Mr. Hemant Narayan Devande had an account with the petitioner HDFC Bank Ltd. and he holds credit card issued

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<sup>74</sup> Draft National e-Commerce Policy, reg 3.23.

<sup>75</sup> Draft National e-Commerce Policy, reg 4.16.

<sup>76</sup> 2017 SCC OnLine NCDRC 635.

by the Petitioner bank. On 14.03.2014 there was a deceitful transaction and payment was made of Rs. 26,998/- from the credit card through Amazon Seller website. The same day, in the evening, the Complainant received a phone call from HDFC Credit Card Company informing about the said transaction and proposal for payment. The Complainant disputed the same and sent a protest to the bank that he had not used the credit card to make any such payment. The internal inquiry was conducted by the Petitioner which only revealed that the transaction has been done using secure login and password which could be known only to the cardholder. The Complainant did not pay this amount when the bill of the credit card was received. However, the Opposite Party bank recovered an amount of Rs. 41,656.46/- which included the principal along with interest and penalty from Complainant's other account.

Aggrieved by the action of Petitioner bank, the Complainant filed a consumer complaint before the District Forum, Pune. Bank contended that the payment was Visa Password Verified and therefore, it was only possible when some person knowing the password have used the credit card. The password was not known to the bank employees. It is only known to the customer. Hearing both the parties District Forum directed the OPs to pay Rs. 41,656.46/- to the Complainant and also directed to pay Rs. 10,000/- for harassment, mental agony and cost of litigation.

Aggrieved with the order of the District Forum, the petitioner bank preferred an appeal with the State Commission, which dismissed the same. Hence the revision petition was filed before the National Commission.

**Decision:** NCDRC observed that the denial of the transaction on phone call by the Complainant shows that the petitioner bank must have come to know that the transaction was disputed. The Petitioner should have stopped the payment. If payment is to be authorised by the Petitioner bank in all the circumstances, then what was the need to phone up the card holder and to verify the transaction. The bank should not have debited to the credit card of the Complainant without any inquiry. The Petitioner did not check with the Amazon Company as to what item was purchased and on what address it

was sent because that would have given the lead to make further inquiry into the question of deceitful payment.

Thus Hon'ble NCDRC held deficiency in service on the part of the bank and order of the Forum was upheld.

**Place of business and territorial jurisdiction**

**Renaissance Hotel Holdings, Inc. v. B.Vihaya Sai & Anr.<sup>77</sup>**

**Facts:** The Plaintiff, hospitality company incorporated and situated in USA has filed a suit against the two Defendants namely defendant no.1 and Defendant no.2. Defendant no. 2 is a hotel and Defendant no.1 is stated to be Managing Director of the hotel and both of them are residents/situated at Bangalore. This suit has been filed by the Plaintiff seeking permanent injunction against Defendants and their Directors, Agents, etc. restraining them from using trademark; or any other trade mark incorporating word; or deceptively similar to the trade mark of the Plaintiff either for their hotels or for the hotel related articles and restraining the Defendants from using the trademark on the Internet as a domain name www.sairenaissance.com. A prayer is also made for giving directions for destruction of printed materials or other materials containing trade mark similar; and for damages of Rs. 25 lakh.

**Issue:** Whether the territorial jurisdiction arise?

**Decision:** The Court considers that on the basis of on-line booking from Delhi of a hotel room situated in USA or situated in Bangalore, the jurisdiction of this Court cannot be invoked. With the vast spread of Internet and e-business, booking of a hotel room can be done from any corner of the world. Merely because a person can get hotel room booked from any corner of the world, would not mean that the hotel or the company running hotel was having place of business at the place of booking through Internet. Similarly, booking of hotel rooms by hospitality or Travel Agents spread over throughout the world would not give rise to the presumption that the business

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<sup>77</sup> 2009 SCC OnLine Del 258.

was being done at the place of such agent. The place of business and place of work has to be understood not looking at the booking through e-mails but where the actual physical business of hospitality is being done. If the hotel rooms are available only in Bangalore and can be occupied and used in Bangalore the place of business of hotel has to be in Bangalore. The place of business cannot be in Delhi or at any other place.

**Rajinder Chawla v. Make My Trip<sup>78</sup>**

**Facts:** the Complainant booked three rooms for three days for 6 adults, from 21.6.2012 to 24.6.2012, with Opposite Party No. 3 - Hotel at Manali (H.P) through Opposite Parties No. 1 2, by making payment of Rs. 18,693/- through Debit Card (Annexure C-1). It was stated that the said booking was also confirmed by the said Hotel vide Annexure C-2. It was further stated that on reaching Manali on 21.6.2012, the Complainant was informed that only two rooms could be made available, even though the payment for three rooms had already been made in advance. It was further stated that despite several requests, the Hotel Authorities did not pay any heed, to the request of the Complainant, and other members. It was further stated that all other hotels were also running fully occupied, being peak season time. It was further stated that Opposite Party No. 3 also wrongly and illegally charged additional tax @ 7.42% on the total amount amounting to Rs. 1,387/- even though the advance booking amount paid to Opposite Party No. 3, was including taxes. It was further stated that the three rooms were booked due to the reason that the Complainant had gone on tour with his friends and with their respective wives, and, as such, they preferred personal rooms for privacy. It was further stated that they were forced to get accommodated in two rooms, due to fault of the Opposite Parties, which spoiled their whole tour. It was further stated that the matter was brought to the notice of the Opposite Parties No. 1 2, through whom the said hotel and rooms were booked, but they did not pay any heed. It was further stated that the aforesaid acts of the Opposite Parties, amounted to deficiency, in rendering service, as also indulgence into unfair trade practice. When the grievance of the complainant, was not redressed,

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<sup>78</sup> First Appeal No. 355/2013 SCDRC Chandigarh.

left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986.

**Issue:** Whether there arose the territorial jurisdiction?

**Decision:** Due to lack of jurisdiction, the complaint was not maintainable, the District Forum was not competent to decide the complaint on merits. The findings recorded by the District Forum, on merits of the case, after holding that it had no territorial jurisdiction to entertain and decide the complaint, are a nullity and cannot be acted upon. It is held that the order passed by the District Forum, that it had no territorial jurisdiction to entertain and decide the complaint, does not suffer from any illegality or perversity warranting the interference of this Commission. the appeal, being devoid of merit, must fail, and the same is dismissed, at the preliminary stage, with no order as to costs. The order of the District Forum that it had no territorial jurisdiction to entertain and decide the complaint, is upheld.

Whether an online purchaser can sue in consumer forums

**Spicejet Limited v. Ranju Aery<sup>79</sup>**

**Facts:** The Complainant Ranju Aery booked air tickets online, through the website Yatra.com for her and her family members travel from Kolkata to New Delhi on 30.06.2015 from the Opposite Party (OP) Airlines M/s. Spicejet Ltd. An amount of Rs. 70,900/- was paid by the Complainant through her debit card. The Complainant and his family members when reached the airport at Kolkata at 1.30 p.m. to board the flight of the OP Airlines from Kolkata to New Delhi scheduled for 20.40 hours, they were shocked to know that the said flight of the OP Airlines had been cancelled. The OP Airlines did not provide any alternative arrangement to the Complainant and her family for travel to New Delhi. The Complainant was, therefore, forced to buy tickets for another flight, operated by the Jet Airways from Kolkata to Mumbai, with connecting flight to New Delhi, departing at 20.40 hours from Kolkata. The Complainant spent an amount of Rs. 80,885/- for five tickets for the said journey. The Complainant alleged that the OPs did not refund

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<sup>79</sup> 2017 SCC OnLine NCDRC 739.

the fare charged from them for the cancelled flight, neither had they provided another alternative flight.

The Complainant filed the consumer complaint in question, seeking directions to the OPs to refund the ticket amount of Rs. 20,000/- along with interest @ 12% per annum for the cancelled flight. They also sought directions to the OPs to pay the additional amount of Rs. 80,885/- paid by them for the alternative flight. The Complainant also demanded Rs. 1.5 lakhs as compensation for mental harassment and Rs. 22,000/- as litigation charges.

The District Forum passed an ex-parte against the OP Airlines directing the OP Airlines to refund an amount of Rs. 80,885/- to the Complainant after deducting the airfare between Kolkata to New Delhi for the cancelled flight, along with interest @ 9% per annum from the date of cancellation of the flight till realisation. They also directed the OP Airlines to pay an amount of Rs. 1.25 lakhs as compensation for harassment and Rs. 10,000/- as litigation cost. The airline appealed against the order challenging the jurisdiction to pass the order as the principal place of the business of the company is Gurugram. The airline company relied on Section 11 of the Consumer Protection Act which states that a consumer complaint can be instituted by the consumer within the local limits of where the defendant resides or carries on business or where the cause of action arises.

**Issue:** Should an online consumer be allowed to sue anywhere?

**Decision:** NCDRC did not accept contention of the airline company and held the company guilty of deficiency of service for cancelling the flight without any reason. On appeal to Supreme Court, Supreme Court ruled out that consumers opting for online purchase of products through websites can file a consumer complaint before any consumer court for deficiency in services.

## **EDUCATION SECTOR**

The Constitution (Eighty Sixth Amendment) Act, 2002 inserted Art. 21A in the Indian Constitution<sup>80</sup>, which meant that there was a fundamental right to education available to all children aged between 6-14. As per the 7<sup>th</sup> All India School Education Survey, there were 12.29 crore students enrolled in primary education<sup>81</sup>, 2.18 crore students enrolled in secondary education<sup>82</sup> and 1.14 crore students enrolled in higher secondary education.<sup>83</sup>

With regards to infrastructure, there are around 15.22 lakh schools all over India<sup>84</sup>, 799 universities, 39,071 colleges and 11,923 stand alone institutions for higher education.<sup>85</sup> With regards to the personnel, there are around 58.16 lakh teachers at the primary school level and 21.27 lakh teachers at the secondary school level.<sup>86</sup>

## **CONSUMER ISSUES**

Every person recognises the value of education, which is why that expenditure on education is a priority. As per the 68<sup>th</sup> NSSO Report, 66% and 76% of

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80 The Constitution (Eighty-Sixth Amendment) Act, 2002.

81 NCERT, '7th All India School Education Survey: Enrolment in Schools' [2005] 10 <[http://www.ncert.nic.in/programmes/education\\_survey/pdfs/Enrolment\\_in\\_school.pdf](http://www.ncert.nic.in/programmes/education_survey/pdfs/Enrolment_in_school.pdf)> accessed 14 July 2019.

82 Ibid 11.

83 (n 131) 12.

84 Ministry of Statistics and Programme Implementation, 'Education – Statistical Year Book India 2017: Table 29.1' <<http://mospi.nic.in/statistical-year-book-india/2017/198>> accessed 14 July 2019.

85 Ministry of Human Resource Development, 'All India Survey on Higher Education: 2015-16' [2016] 3 <[https://mhrd.gov.in/sites/upload\\_files/mhrd/files/statistics-new/AISHE2015-16.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/statistics-new/AISHE2015-16.pdf)> accessed 14 July 2019.

86 'State/UT-wise Number of Teachers in Educational Institutions upto 2015-16' <<https://data.gov.in/resources/state-ut-wise-number-teachers-educational-institutions-up-to-2015-16>> accessed 14 July 2019.

rural and urban households respectively reported an expenditure of 3.5% and 7% of the monthly personal consumption expenditure respectively on primary education per person per month.<sup>87</sup>

Given this importance to education, the consumer grievances must be looked at<sup>88</sup>:

1. Delay in providing study material which is of high quality.
2. Lack of qualified faculty or study material.
3. Lack of providing certificates, report cards etc.
4. Problems in admission process.
5. Problems in conducting exams.
6. Non-adherence to curriculum or UGC guidelines.

## **REGULATORY AUTHORITIES**

Broadly speaking, there are four regulatory authorities for the education sector:

1. The Ministry of Human Resource Development is responsible for development of human resource in India through education. It functions through two departments – the Department of School Education & Literacy and the Department of Higher Education.<sup>89</sup>
2. The University Grants Commission was established by the University Grants Commission Act, 1956<sup>90</sup> for development and maintenance of educational standards in India.<sup>91</sup>

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87 National Sample Survey Office, 'Report No. 558: Household Consumption of Various Goods and Services in India 2011-12' [2014] 32 <[http://mospi.nic.in/sites/default/files/publication\\_reports/Report\\_no558\\_rou68\\_30june14.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Report_no558_rou68_30june14.pdf)> accessed 14 July 2019.

88 Shubham Borkar and Nayanika Shukla, 'Education Policy in India and the legislative framework around it (Problems & Solutions)' (*Mondaq*, 23 January 2019) <<http://www.mondaq.com/india/x/773906/Education+In+India+Problems+And+Solutions>> accessed 14 July 2019.

89 MHRD, 'About MHRD' <<https://mhrd.gov.in/about-mhrd>> accessed 14 July 2019.

90 University Grants Commission Act, 1956, s 4.

91 UGC, 'Genesis' <<https://www.ugc.ac.in/page/Genesis.aspx>> accessed 14 July 2019.

3. There are numerous statutory bodies for certain professional disciplines – the Medical Council of India, the All India Council of Technical Education, Indian Council for Agricultural Research etc.<sup>92</sup>
4. The National Assessment and Accreditation Council was established following the recommendations of the National Education Policy, 1986<sup>93</sup> and the Programme of Action, 1992<sup>94</sup> which asked for setting up of an autonomous institution for accreditation of higher education institutions.<sup>95</sup>

## CASES

### Deficiency in admission process

#### **Rithvik K.R. v. Union of India<sup>96</sup>**

**Facts:** In the present case, four students applied for admission in KIMS against management quota for I year MBBS course for the academic year 2014-2015 along with fees and donations amounting to approximately eighty lakhs. The father of one of the student was also made to sign an undertaking that he understands that the admission given to his son was only provisional and subject to approval by RGUHS/MCI and in excess of the stipulated management seats. In case of non-approval, the management and the college will not be responsible. Later, three of the students were discharged from the college on the ground that their admission to the course was in excess of the admission capacity fixed for the college. The college discharged them only after the expiry of the last date of taking admission in colleges for that academic year.

92 UGC, 'Professional Councils' <<https://www.ugc.ac.in/page/Professional-Councils.aspx>> accessed 14 July 2019.

93 National Education Policy 1986 <[http://www.ncert.nic.in/oth\\_anoun/npe86.pdf](http://www.ncert.nic.in/oth_anoun/npe86.pdf)> accessed 14 July 2019.

94 Programme of Action 1992 <[https://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/POA\\_1992.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/POA_1992.pdf)> accessed 14 July 2019.

95 National Assessment and Accreditation Council <<http://www.naac.gov.in/>> accessed 14 July 2019.

96 2015 SCC OnLine Kar 2305.

**Issue:** Whether there was a deficiency in service by the college authorities in admission process?

**Decision:** The Court found the conduct of the college of taking such an undertaking from the parents of the student along with huge amounts of donation disturbing and ordered the MCI and Central Government to take serious note of the matter and take measures to ensure transparency in the admission process even against management quota, especially by making it more technology based. The High Court also found the college's act of not discharging the students with illegal admission and not refunding the amount received from them well before the last date for admission in colleges for that academic year as grossly irresponsible and as it resulted in them losing one academic year and unnecessary litigation causing unimaginable mental agony to them the High Court ordered the college to pay Rs. 1 crore each to all the three students as compensation along with refund of the amount paid by them to the college for the admission.

**Nipun Nagar v. Symbiosis Institute of International Business<sup>97</sup>**

**Facts:** The Complainant had surrendered his seat after getting admission into another institute. The Opposite Party refused to refund the entire fees to the complainant. The National Commission relied on the notice issued by the University Grants Commission providing that institutes should refund the entire fee, except for processing fee of Rs. 1000/-, to students who withdraw before the start of the course.

Definition of commercial activity under Consumer Protection Act, 1986

**Bihar School Examination Board v. Suresh Prasad Sinha<sup>98</sup>**

**Facts:** This was an appeal filed to the Supreme Court by Special Leave under Article 136 of the Constitution of India, 1950. In this case, the Appellant-Board failed to publish result of Respondent's son in Senior Secondary Examination. As a result, the Respondent's son had to re-appear for

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97 Revision Petition No. 1336/2008 (NCDRC).

98 AIR 2010 SC 93.

examination and suffered loss of 1 year. Pursuant to this, the Respondent sought compensation by filing a consumer complaint to the District Consumer Forum, Patna. The District Forum ordered compensation. Thereafter, the Appellant Board's appeal was dismissed by State Commission. The Appellant's appeal before National Commission was also dismissed. Hence, the Appellant preferred the present appeal by Special Leave.

**Issue:** Whether a statutory School Examination Board comes within purview of Consumer Protection Act?

**Decision:** The Supreme Court held that the object of the Consumer Protection Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. In essence, the Supreme Court held that the process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. The functions of Appellant cannot be divided into partly statutory and partly administrative. Appellant does not offer its 'service' to any candidate and examination fee paid by student is not consideration for availment of any service. Therefore, deficiency in process of examination does not convert Appellant into a service provider for a consideration nor convert examinee a consumer, therefore Respondent's complaint would not be maintainable. The Appellant Board was not rendering any 'service', hence impugned orders of Consumer Fora set aside and the Appeal was allowed.

Definition of service under Consumer Protection Act, 1986

**Maharshi Dayanand University v. Surjeet Kaur<sup>99</sup>**

**Facts:** The dispute arose when the Respondent felt aggrieved by the action of the Appellant refusing to confer the degree of B.Ed. on her. The background of the facts giving rise to the case was that the Respondent took admission in the academic session of 1994-95 as a regular student to pursue the course of M.A. in Political Science from Government College, Gurgaon. The Respondent appeared in the Part-II Examination in May, 1995 as a regular candidate and in the same academic session of 1994-95 she also applied for admission in the B.Ed. (correspondence course) without disclosing the fact that she was already pursuing the regular course of M.A. in Political Science. The University at the time of preparation of the results of M.A. in Political Science discovered that the Respondent had been pursuing her B.Ed. course in violation of Clause 17(b) of the General Rules of Examination and accordingly the Respondent was informed that in view of the aforesaid rules she should exercise her option to choose anyone of the courses. The Respondent voluntarily and consciously opted for pursuing her course of M.A. in Political Science and forewent her B.Ed. Degree course. Subsequently, the University as a general measure of benefit granted an indulgence through Notification dated 16.3.1998 giving a further chance to such Ex. students who had not been able to complete their post-graduation/B.Ed. courses within the span of prescribed period as provided for under the rules. The supplementary examinations in this regard were announced by the University in the month of December, 1998. The Respondent applied under the said Notification for appearing in B.Ed. examination and succeeded in appearing in the examinations and also passed the same. The Appellant- University refused to confer the degree of B.Ed. on the Respondent. Aggrieved, the Respondent approached the District Forum in the year 2000 praying for the relief which has now been ultimately awarded in the impugned order of National Commission.

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99 (2010) 11 SCC 159.

**Issue:** Whether imparting of education by the educational institutions for consideration falls within the ambit of service as defined under the Consumer Protection Act?

**Decision:** The National Commission stated that imparting of education by the educational institutions for consideration falls within the ambit of service as defined under the Consumer Protection Act. The Supreme Court set aside the impugned judgement, on grounds of non-competence of the district forum to entertain the complaint since *Bihar School Examination Board v. Suresh Prasad Sinha* clearly enunciated that services provided by educational institutions cannot be brought under Consumer Protection Act. The Supreme Court is right in upholding Bihar Examination Board, as bringing educational institutions under the ambit of consumer protection would make administrative matters subject to litigation and would cause a flood in suits to harass the administration.

Demand of money for transfer certificate

**Banne Singh Sekahwat v. Jhunjhunu Academy**<sup>100</sup>

**Facts:** The Complainant had filed a revised petition against the order of the State Commission dated 02.06.2016. The Complainant's daughter was a student of the OP school. She passed her 12<sup>th</sup> exam in the year 2013 and contacted school for the issue of transfer certificate and refund of her caution money. The school demanded Rs. 10,000/- as a precondition to issue transfer certificate though there was no outstanding fees. Because of refusal to issue TC, Complainant's daughter did not get admission in academic year 2013-14. So the Complainant filed consumer complaint in the District Forum and sought compensation of Rs. 4,50,000./- The OP denied all the allegations and denied that Complainant never approached school. The District Forum directed school to issue TC and character certificate to Complainant's daughter within 15 days otherwise liable to pay Rs. 10,000/-. The Complainant was aggrieved of the meagre amount of compensation awarded by District Forum preferred an appeal in State Commission. The State Commission did not find any fault with the order of District Forum. Hence, Complainant filed revised petition under NCDRC.

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<sup>100</sup> 2017 SCC OnLine NCDRC 128.

**Issue:** Whether there was deficiency in service on part of school?

**Decision:** NCDRC held that it is clear that on account of wrongful act of the Opposite Party daughter of the Complainant was prevented from getting admission in college in the current session i.e. 2013-14. Wastage of one year in the career of a student has wide implication on the job as also promotion prospects. Both the forums have failed to appreciate this aspect of the matter while deciding on the compensation to be paid. Therefore impugned order cannot be sustained. Thus the order of State Commission was modified and it was directed to OP to pay Rs. 50,000/- to the Complainant within a month. On failing the Complainant shall be entitled to recover the money by filing execution petition in the District Forum.

Failure to disclose information in prospectus

**Director, Vels Group of Maritime College v. Lovish Prakash Guldkokar**<sup>101</sup>

**Facts:** The Vels Group of Maritime College was engaged in offering several courses including Higher National Diploma in Nautical Science. The Complainant took admission in the aforesaid course and completed the same in 2005-2007. The grievance of the Complainant is that though the said course had not been approved by the Government of India, the aforesaid information was not disclosed in the prospectus issued by the petitioner. Since on completion of the course, the Complainant did not get the Continuous Discharge Certificate (CDC) from the Government, despite having completed the above referred course, on account of the approval of Director General of shipping having not been obtained by the Petitioner, he approached the concerned District Forum by way of a consumer complaint, seeking compensation etc. The contention of the Respondents is that the Petitioner which took a preliminary objection is barred by limitation, and it was also alleged that on completion of the course by the Complainant, he was provided the requisite certificate namely Higher National Diploma in Nautical Science (HND-NS). This was also the case of the Petitioner that

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<sup>101</sup> Revision Petition No. 1895/2018 (NCDRC).

the aforesaid Diploma had been approved by Maritime Education Training (VAMET) U.K. and the said information was duly disclosed in the prospectus. The District Forum having allowed the complaint and having directed the Petitioner to refund the amount of Rs. 8,50,000/- which the Complainant had paid to it along with compensation quantified at Rs. 50,000/- and the cost of litigation quantified at Rs. 20,000/-, the Petitioner approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, the petitioner is before this Commission.

**Issue:** Whether the Petitioner is deficient in rendering the Service?

**Decision:** The National Commission observed that a correct and purposive interpretation of the MS Notice Dt. 03/12/2003, it required not only to a new course but also to a new batch of anexisting course offered by a training institute should necessarily obtain the prior approval from the Director General of Shipping before commencement of the training courses. It also observed the reply given by the Government of India under Right to Information Act, that No student, who has completed higher national Diploma in Nautical Science from Vels College of Maritime Studies, Chennai is entitled to get Indian CDC from your office, as Vels College of Marine Studies Chennai has not obtain prior approval from the Director General of Shipping before commencement of the training course affiliated to Foreign marine Administration. As the Rule 5(4) of the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's identity Document) Rules, 2001 lays down the procedure to obtain the Indian CDC which read as- A citizen of India who is in possession of a valid certificateof competency issued by any foreign nation is eligible to request for issue of a CDC. It is therefore, evident that the Complainant was not entitled to get Indian CDC from Directorate General of Shipping since no approval from the said Directorate had been taken in respect of the batch in which admission was taken by the Complainant. The national Commission dismissed the revision petition of the Petitioner and held that the Petitioner was deficient rendering services by not obtaining the prior approval of the Directorate General of Shipping or at least by not disclosing MS Notice no. 27 dated 03.12.2003 in the prospectus issued after 03.12.2003.

Lack of medical attention given to student

**B.N.M Educational Institution and Anr v. Kum Akshatha and Anr<sup>102</sup>**

**Facts:** The Respondent/Complainant, a child aged 14 years at the relevant time, was a 9<sup>th</sup> standard student of B.N.M. Primary and High School, being run by B.N.M. Education Institutions at Bangalore. In December 2006, a group of students, including the Respondent /Complainant, accompanied by some teachers of the school, came to Delhi for an educational tour to several places in North India. The group reached Delhi on 24.12.2006. The Complainant allegedly developed fever on 24.12.2006 and her illness was intimated, by her classmates, to the teachers accompanying the students. The case of the Complainant/Respondent is that no medical aid was provided to her, which resulted in deterioration of her health. On 26.12.2006, when the group was on a visit to Ranathambore National Wildlife Park, the Complainant had severe shivering and seizure. Twice, she became unconscious, firstly at 5 a.m. and then at 9.30 a.m. and she also vomited, due to high fever. According to the Complainant, no medical help was provided to her even at that time. When the group was returning to Delhi by road, undertaking a journey of about 14-15 hours, the Complainant, allegedly not being in her senses, attempted to jump from the bus but only a Crocin tablet was provided to her, without taking to her any doctor or hospital, which resulted in further deterioration of her health. She allegedly bite her tongue twice, which resulted in bleeding and she lost senses. Though her condition continued to worsen, she was made to participate in a camp fire till the midnight of 30.12.2006 and made to travel to Delhi with the rest of the group. By the time they reached Delhi, she was allegedly totally drowsy and behaving indifferently. She was taken to the airport on 31.12.2006 without first taking her to a doctor or a hospital. But on account of her sickness, she was not allowed to take the flight. On return to the hotel, she allegedly vomited and fell unconscious in the bathroom. The door had to be broken upon, in order to rescue her from the bathroom. She was then taken to Jessa Ram Fortis hospital, where she was admitted. It was at that stage, that the

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102 2016 SCC OnLine NCDRC 1116.

teachers intimated the parents of the Complainant about her ill-health. It was diagnosed by the doctors that she had suffered a viral fever, namely, Meningo Encephalitis. The doctors opined that had she been given timely medical aid and attention, she could easily have been cured. She is stated to have become vegetable like for all practical purposes and needs to be bedridden all the 24 hours. Alleging gross negligence on the part of the teachers who were accompanying her and the school management in taking care of the child at the time she was in their care, control and supervision, the Complainant approached the concerned State Commission by way of a consumer complaint, seeking a sum of Rs. 35 lakhs towards medical expenditure incurred upon the treatment of the Complainant along with Rs. 25 lakhs for her further treatment and Rs. 40 lakhs as damages. The State Commission vide its order dated 9.3.2016 directed the Appellant to pay a total sum of Rs. 88,73,798/- to the Complainant along with interest @ 9% p.a. from the date of filing of the complaint. An appeal was made to the National Commission.

**Issue:** Whether the teachers were vicariously liable to the student?

**Decision:** The National Commission held that the Appellant should pay a consolidated amount of Rs. 50,00,000/- as an all-inclusive one time compensation to the Complainant, along with interest @ 8% per annum from the date of filing of the complaint. The Appellants are granted six weeks to deposit the said amount with the concerned State Commission. On such deposit, a sum of Rs. 40,00,000/- shall be deposited in a Nationalized Bank, in an FDR in the joint name of the parents of the Complainant, initially for a period of ten years. The interest which accrues on the said deposit shall be utilized by the parents of the Complainant solely for her treatment and wellbeing. The balance amount shall be paid to the parent of the Complainants. If the interest which is paid on the fixed deposit is not sufficient for the treatment of the Complainant, the parents of the Complainant will be entitled to withdraw part of the said deposit with the prior permission of the concerned State Commission. Thus, the appeal was disposed of.

Non issuance of transfer Certificate on Time amounts to Deficiency in Service

**Davinder Brar & Others v. Ravleen Kaur<sup>103</sup>**

**Facts:** The Complainant, Ms. Ravleen Kaur, was a former student of class IX of Doon Valley International Public School. It was alleged that the Complainant sought a Transfer Certificate from Doon Valley International School, but it was not issued to her in time, which resulted in loss of her one academic year. She filed a complaint before the District Forum and prayed for compensation for the alleged loss and injury due to the act of the Opposite Party school. The District Forum dismissed the complaint. The Complainant filed first appeal before the State Commission. The State Commission allowed the appeal.

**Issue:** Whether non-issuance of transfer certificate on time amounts to deficiency in service?

**Decision:** School authorities cannot act in an arbitrary or casual manner in issuing a normal and factually correct school leaving Transfer Certificate. Such Certificate concerns the career of a student, and should be issued on request with the due responsibility, and at the earliest. The NCDRC concurred with the findings of the State Commission that the school was not only “deficient” in its service by not issuing the Transfer Certificate on time, but its actions of withholding the certificate also constituted “unfair trade practice”. It also agreed that the Respondent student must have come to the Court only after she had approached the authorities for School Leaving Transfer Certificate and it was not issued to her. Even when the consumer complaint was filed, the Petitioner school could have acted with the due requisite responsibility and most immediately issued the Transfer Certificate requested for. The contention of the Petitioner school, that she was academically a “poor” student, has no concern or relationship with issuing a normal and factually correct school leaving Transfer Certificate on request. It is nobody’s case that she had to be (erroneously) shown as a “good” student in the Transfer Certificate. Noting that the school had “unnecessarily and

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103 Revision Petition No. 2829 of 2010.

unwarrantedly acted in an intransigent manner”, the Commission upheld the decision of the State Commission granting compensation worth Rs. 50,000/- to the Respondent along with litigation costs.

Practice of making parents and children’s to sign one sided agreement at the time of enrolment is unfair trade practice

**FIITJEE v. Shinjini Tewari<sup>104</sup>**

Facts: In the present case, the parents of the Respondent child had paid the fees in advance for a two-year coaching programme. However, due to acute medical reason, it became impossible for the child to attend the coaching classes. On this account, the parents asked for a refund but the same was denied by the Appellant organisation. The Appellant had relied the judgements of the same consumer forum in *FIITJEE Ltd. v. Harish Soni, and FIITJEE Ltd. v. Vikram Seth* to argue that the Complainant is not entitled to any refund in terms of provisions of the enrolment form, which was duly signed by the Complainant at the time of admission of her son.

**Issue:** Whether refund can be taken from coaching institutes in case of impossibility to attend the classes?

**Decision:** The forum rejected this claim by citing *FIITJEE Ltd. v. Dr. Minathi Rath* where it was held that FIIT JEE Ltd. could not charge full advance fee for Two years and held the Complainant entitled for receipt of refund of fee taken in advance from him by FIIT JEE. It opined that the Appellant cannot be allowed to be on an advantageous position, keeping in mind the interests of poor consumers. Moreover, when a student or his/her parents signs the admission form, they have no bargaining power to negotiate, or refuse to sign any particular clause in the admission form. Hence, such clauses should not be held against the student. The forum also went on to note that a student or a trainee may leave midstream if he finds the service deficient, substandard and non-yielding, and to tell him that fees once paid are not refundable was an unfair trade practice, as no service provider can take or charge the

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<sup>104</sup> (Appeal No. 109 of 2019) Chandigarh CDR.

consideration of the service which it has either not given or has not been availed. The forum also criticised the coaching institute for not respecting the medical condition of the child which caused the latter further mental agony. The practice of making children and parents sign one sided agreements at the time of enrolment is also held to be an unfair trade practice by the present forum. Therefore, the District Consumer Forum's decision of ordering the coaching institute to refund the fee along with compensation and litigation costs was upheld.

Refund of amount deposited during admission

**Registrar, Guru Gobind Singh Indraprastha University v. Arun Kumar<sup>105</sup>**

**Facts:** Arun Kumar took admission in B.Tech Course of the Guru Gobind Singh Indraprastha University in the academic year 2010-11 depositing a sum of Rs. 53,000/- vide receipt dated 03.08.2010. As per the counselling schedule notified by the university, the admission could be withdrawn latest up to 27.08.2010, though the classes were to commence on 02.08.2010 and all the students taking admission during the first counselling were to report to their respective college/institution on 02.08.2010 or on the date following the day of admission, in case the admission was granted after 02.08.2010. Arun Kumar, who had been given admission in Guru Prem Singh Memorial College of Engineering, did not report to the said college nor did he deposit the fee at the said college till 30.11.2010. Vide letter dated 30.04.2012, the aforesaid college sought cancellation of the aforesaid student. Admission was accordingly cancelled on 02.05.2012. The amount deposited by the Complainant having not been refunded, he approached the concerned District Forum by way of a consumer complaint seeking refund of the said amount. The District Forum directed the university to refund the entire amount deposited by the Complainant after deducting a processing fee of Rs. 1,000/-. A sum of Rs. 5,000/- was awarded as compensation to the Complainant along with another sum of Rs. 5,000/- as the cost of litigation. Being aggrieved from the order passed by the District Forum, the Petitioner university approached the concerned State Commission by way of an appeal.

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<sup>105</sup> Revision Petition No. 1783/2016 (NCDRC).

The said appeal having been dismissed, the Petitioner is before this Commission.

**Issue:** Whether the University is liable to refund the amount deposited by the Complainant?

**Decision:** The National Commission observed that the whole of the case of the Complainant is based upon a circular dated 23.04.2007 issued by University Grants Commission that the entire amount collected from the student was required to be refunded after deducting a sum of Rs. 1,000/- in a case where the student withdrew from the programme. In the event of the student leaving after joining the course and the seat so vacated by him being filled by another candidate by the last date of admission, the university was to return the fee collected from him with proportionate deduction of monthly fee and proportionate hostel fee wherever applicable. The purpose of aforesaid circular in my view is not to allow unjust enrichment of the institution/university where a student withdraws from the programme, provided that he withdraws from the programme by the last date stipulated for this purpose or before the date scheduled for joining the course. However, if the seat so vacated by such a student remains vacant on account of late withdrawal of admission by him, the university, in my view, is not required to refund the amount deposited by him. Asking the university to refund the said amount would neither be fair nor reasonable in such an eventuality. In light of the above the National Commission set aside the impugned orders and accordingly dismissed the complaint with no orders as to costs.

Right of lien

**Registrar of Manipal University and Another v. Dr. Sushith<sup>106</sup>**

**Facts:** The Respondent/Complainant obtained admission for the Post-Graduate Degree Course in MD in Biochemistry at the Petitioners institution for the Academic Year 2005-06. The Respondent completed and passed the said course in the year 2008. The Petitioners were required to issue him a degree certificate confirmed by Academy of higher Education. An agreement

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<sup>106</sup> 2012 SCC OnLine NCDRC 846.

was executed between the Petitioners and the Respondent whereby the latter was to undertake to serve the Petitioners for a period of 5 years after completion of the course, failing which he would have to repay the entire tuition fee. The Respondent had absented himself from the service and not reported back. As lien for that, the Petitioners retained his certificates. In spite of repeated requests and demands made by the Respondent to the Petitioners, the latter refused to issue the said certificate and withheld it without any substantial reason or cause. A complaint was filed by the Respondent before the District Forum aggrieved by the decisions against it by the District Forum as well as the State Commission on appeal, the present instant revision petition was filed by the Petitioners.

**Issue:** Whether the order of the State Commission will be upheld?

**Decision:** The question before the National Commission was whether the Petitioners had acquired the right of lien for retaining the certificates. It was held that the agreement between the two parties did not contain any condition or clause by virtue of which the Petitioners-University was entitled to retain the degree or certificate of the Respondent as a lien till the latter had fulfilled the terms of the aforesaid agreement. The order of the State Commission was upheld and the revision petition dismissed.

#### Scope of revisional jurisdiction

**Birla Institute of Technology and Science v. Abhishek Mengi S/o Virender Kumar<sup>107</sup>**

**Facts:** Complainant after depositing requisite entrance fee and qualifying the examination was selected for admission to M.Sc. (Tech) General Studies, with Petitioners. Complainant also deposited Rs. 55,000/-, as advance fee. Complainant got admission in Engineering College after that Complainant, made a request to the Petitioners to refund the admission fee and give the original certificates. Complainant was informed that fees had been forfeited, as he had not submitted the withdrawal form. Complainant was only refunded

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<sup>107</sup> 2013 SCC OnLine NCDRC 394.

Rs. 8,000/-, as mess advance and caution deposit, out of Rs. 55,000/-. Complainant filed complaint u/s. 12 of Act before District Forum alleging that Petitioners were not refunding the full amount of fees, deposited by Complainant. Petitioners contended that District Forum at Chandigarh had no territorial jurisdiction as no cause of action arose to Complainant at Chandigarh. The entire cause of action arose at Pilani, Rajasthan. It was further stated that Petitioners does not fall within the category of a service provider, qua the Complainant. District forum allowed said complaint and directed Petitioners to refund to the Complainant the balance amount of Rs. 47,000/-, after deducting Rs. 1000/- as service/ processing/ administrative charges, besides costs of litigation assessed at Rs. 10,000/-. State Commission dismissed appeal filed against said order; hence this revision petition.

**Issue:** Whether the scope of revisional jurisdiction was held to be limited?

**Decision:** The question before National Commission whether District Forum had jurisdiction for this matter. It was held that Petitioners have not placed any document to show that seat vacated by the Complainant was not filled up at all. Moreover, u/s. 21 of Act, the scope of revisional jurisdiction was very limited. Under s. 21 of Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. There was no jurisdictional or legal error which call for interference in the exercise of powers u/s. 21 (b) of the Act; hence revision petition dismissed.

Use of electronic gadgets for unfairly accessing answer keys

**Tanvi Sarwal v. Central Board of Secondary Education<sup>108</sup>**

**Facts:** Amid allegations of large scale use of unfair means via electronic gadgets thereby accessing the answer keys, the All India Pre-Medical Tests (AIPMT) and Pre Dental Entrance Tests conducted by the Central Board of

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<sup>108</sup> 2015 SCC OnLine SC 539.

Secondary Education (CBSE) on 03.05.2015, was cancelled and directed the CBSE to hold fresh entrance test within four weeks from the date of this judgment, keeping in mind the technicalities and the commencement of the new academic session on 01.08.2015. The matter came into prominence when a day after the exam, several newspapers reported that 90 answer keys had been transmitted to the candidates during the examination. Rampant use of latest technology (vests fitted with SIM cards) was done so as to facilitate the transmission. The Court took cognizance of the issue and restrained any further steps regarding the examination process. Jaideep Gupta on behalf of the Petitioners contended that cancellation of AIPMT-2015 is the only solution to restore the faith of the candidates in the existing system of examination, as the investigations reveal the involvement of a countrywide network. However Ranjit Kumar, appearing for the CBSE argued that the Board took all the necessary precautions while conducting the entrance tests, therefore they should not be held liable for any lapse whatsoever.

**Issue :** Whether there was a deficiency in service by Central Board of Secondary Education in conducting examinations?

**Decision:** The Division Bench of R.K Agarwal and Amitav Roy, JJ., cancelled the All India Pre-Medical Tests (AIPMT) and Pre-Dental Entrance Tests conducted by the Central Board of Secondary Education. The Bench meticulously perused the status reports filed by the investigation authorities and the evidences procured by them. It was observed that the investigations indeed reveal a deep rooted conspiracy to aid the beneficiary candidates with answer keys so as to help them solve the question paper. The Court further observed that in view of a countrywide network operation, it is plausible that many more beneficiaries are revealed in near future; therefore segregation of the identified beneficiaries is not a solution for the present issue. Keeping in mind the amount of inconvenience that would be caused to the candidates and the Board alike by re-conducting the exam, the Court concluded that AIPMT- 2015 has been stripped of its sanctity, therefore it had to be necessarily annulled.

Withdrawal of admission

**Controller, Vinayak Mission Den. Col. and Anr. v. Geetika Khare<sup>109</sup>**

**Facts:** The Complainant had secured admission to a BDS college but had to withdraw from the same on account of lack of recognition of the said college and also other deficiencies, which not only caused inconvenience and mental harassment but also resulted in the loss of an academic year.

**Issue:** Whether the compensation is paid despite of refunding the admission fees?

**Decision:** The Supreme Court held that the refund of fee made by the University “met the ends of justice” and there was no requirement for any further compensation to the Complainant. The court should have dealt with the case in a more strict sense. Duping students by opening unrecognised universities and playing with their careers should be dealt with in a very strict manner and exemplary damages should have been awarded.

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<sup>109</sup> (2010) 12 SCC 215.

## ELECTRICITY SECTOR

As per official statistics and reports, India has a national electricity grid with a capacity of 357.875 GW.<sup>110</sup> In the period from 2017-18, the gross electricity consumption was 1149 kWh per capita<sup>111</sup>. Increasing population and government policies aimed at increasing the number of electricity connections in India, such as the DDUGJY<sup>112</sup> mean that the number of people who require electricity will rise rapidly.<sup>113</sup>

### CONSUMER ISSUES

The National Electricity Policy, 2005<sup>114</sup> and the National Electricity Plan, 2018<sup>115</sup> lay out the common grievances of consumers with regards to the electricity sector which have been listed out in a report<sup>116</sup>:

1. Delay in sanctioning of a new connection.
2. Problems in supply of electricity.

<sup>110</sup> Central Electric Authority, 'All India Installed Capacity (In MW) Of Power Stations' <[http://www.cea.nic.in/reports/monthly/installedcapacity/2019/installed\\_capacity-06.pdf](http://www.cea.nic.in/reports/monthly/installedcapacity/2019/installed_capacity-06.pdf)> accessed 14 July 2019.

<sup>111</sup> Central Electric Authority, 'Growth of Electricity Sector in India from 1947-2018' <[http://www.cea.nic.in/reports/others/planning/pdm/growth\\_2018.pdf](http://www.cea.nic.in/reports/others/planning/pdm/growth_2018.pdf)> accessed 14 July 2019.

<sup>112</sup> Ministry of Power, 'Status of Rural Electrification (RE) under DDUGJY' <<https://powermin.nic.in/en/content/overview-1>> accessed 14 July 2019.

<sup>113</sup> Bhasker Tripathi, 'Now, India is the third largest electricity producer ahead of Russia, Japan' *Business Standard* (26 March 2018) <[https://www.business-standard.com/article/economy-policy/now-india-is-the-third-largest-electricity-producer-ahead-of-russia-japan-118032600086\\_1.html](https://www.business-standard.com/article/economy-policy/now-india-is-the-third-largest-electricity-producer-ahead-of-russia-japan-118032600086_1.html)> accessed 14 July 2019.

<sup>114</sup> National Electric Policy, 2005.

<sup>115</sup> National Electric Plan, 2018.

<sup>116</sup> Suresh Misra and S.K. Virmani, 'Electricity and Consumer: Consumer Education Monograph Series 22' [2016] 34 <<http://www.consumereducation.in/monograms/Electricity%20and%20Consumer.pdf>> accessed 14 July 2019.

3. Erratic voltage fluctuations.
4. Delay in repairs and restoration of power supply.
5. Delay in reconnection following disconnection.
6. Delay in shifting of connection lines.
7. Problems in the electricity meter.

### **CERC AND APPELLATE TRIBUNAL FOR ELECTRICITY**

The Electricity Act, 2003 provided for the establishment of the Central Electric Authority<sup>117</sup> and the Central Electric Regulatory Commission<sup>118</sup> for the regulation and management of electricity services. It has passed numerous regulations on cross-border trade<sup>119</sup>, tariff rates<sup>120</sup>, inter-state transmission of electricity<sup>121</sup>, power supply<sup>122</sup> and amended them periodically in order to address problems face by consumers.<sup>123</sup>

For the purpose of addressing consumer concerns, an Electricity Ombudsman shall be appointed by the State Electricity Regulatory Commission which shall be established by every state government.<sup>124</sup> In addition, appeals against the order passed by the Central and State Electricity Regulatory Commissions shall be heard by the Appellate Tribunal for Electricity.<sup>125</sup>

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117 Electricity Act, 2003, s 70.

118 Electricity Act, 2003, s 76.

119 Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations 2019.

120 Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

121 Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2004.

122 Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010.

123 CERC, ‘Annual Report: 2017-2018’ [2019] 3 <[http://www.cercind.gov.in/2019/annual\\_report/Annual\\_report-2017.pdf](http://www.cercind.gov.in/2019/annual_report/Annual_report-2017.pdf)> accessed 14 July 2019.

124 Electricity Act, 2003, s 82.

125 Electricity Act, 2003, s 110.

## CASES

Delay in granting the electricity services amounts to deficiency in services

**Tukaram v. The Executive Engineer, Maharashtra State Electricity Distribution Company Limited and Ors<sup>126</sup>**

**Facts:** Appellant applied for electricity connection on his land to Respondent and deposited charges. The Respondent raised a bill for consumption charges. The Appellant claimed that no electricity connection had been installed. Appellant filed a consumer complaint before the Consumer Forum. The District Forum allowed the complaint and granted compensation. In appeal, the State Commission reversed the order of the District Forum. When the Appellant carried the matter to the National Commission, the revision was initially dismissed. However, the Appellant filed a review petition. The Review Petition was allowed and compensation was awarded to the Appellant. Appellant preferred a present appeal for enhancement of compensation.

**Issue:** Whether Appellant entitled for enhancement of compensation?

**Decision:** Supreme Court while allowing the appeal held that the grant of compensation by the National Commission would not be adequate to meet the requirement of just and fair compensation to a consumer who had suffered as a consequence of the default of the Respondent and enhance the compensation to an amount of Rs. 5,00,000/- which shall be paid over within a period of four weeks from today. In default, the compensation shall carry interest at the rate of 9 per cent per annum. Observing that the Appellant had suffered hardship and inconvenience as a result of an unexplained delay of one decade on the part of the Respondent (s) in granting an electricity connection.

Not supplying electricity to the commercial entity is deficiency in service under CPA, 1986

**Sheetla Granite Daharra Kabrai through its Partner, Shri Shiv Vihala Shivhare Mohaba v. Dakshinanchal Vidhut Vitran Nigam Ltd. through its Executive Engtineer<sup>127</sup>**

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126 MANU/SC/0601/2019.

127 2020 SCC OnLine NCDRC 75.

**Facts:** The Complainant had taken an electric connection of 130 KVA in the year 2013. The Complainant had been regularly paying the bills. It is stated that after a long gap of four years, the OP sent a demand notice vide letter No. 3752 dated 22.12.2017 for Rs. 37,25,673/-, wherein it was mentioned that the previous bills were on the basis of MF-2 instead of MF - 4. So, the difference amount as mentioned above was demanded. Being aggrieved by the act of demanding dues after two years, which was against Sec. 56 (2) of Electricity Act, 2003, the Complainant filed a complaint in the State Commission.

State commission dismissed the complaint with the following observation: The electric connection in question has been obtained by it for commercial purpose to run machine for crushing stones. As such the Complainant is not a consumer as defined in Section (2)(1)(d) of the Consumer Protection Act, 1986. It has not been stated in complaint that the business of crushing of rocks through machine has been started for the purpose of earning livelihood by means of self employment. As such the explanation of Section 2(1) (d) of the Consumer Protection Act, 1986 is not applicable on Complainant in view of averments made in complaint. Being aggrieved by the order of the State Commission, the Complainant has filed the present First Appeal at NCDRC.

**Issue:** Whether complainant is a consumer under the Sec. 2 (1)(d) of the consumer protection act?

**Decision:** It is seen that the Complainant is not a consumer. The Complainant, being a firm having partners and doing the job of crushing of rocks through a machine cannot be taken to be self-employed and doing it for livelihood. The Consumer Protect Act, 1986 specifically only excludes persons who buy goods exclusively for the purpose of earning their livelihood, by means of self-employment. In the present matter, electricity was taken from the OP to run the machine for crushing the rocks. The firm was run to procure profit. This *prima facie* shows that the Complainant was undertaking a commercial activity. Hence, court hold that the Complainant is not a 'consumer' as per the provisions of Consumer Protection Act, 1986.

**Bihar State Electricity Board and Ors. vs. Iceberg Industries Ltd. and Ors.<sup>128</sup>**

**Facts:** The company had entered into an agreement for supply of electricity with the Appellant Board. This was for supply of high-tension electricity connection for setting up of a brewery. The Bill was raised by the Appellant towards AMG and DPS. The company did not make payment thereof within the prescribed date. Three disconnection notices on account of default in payment of AMG as also energy charges were issued by the Board. The company made a representation for liquidating their dues on account of AMG in ten monthly instalments citing certain business related difficulties. The company's request for grant of instalments to liquidate their dues was ultimately accepted by the Board and to that effect an agreement was executed between Company and the Board for liquidation of the outstanding dues in ten instalments. The notice under Section 56 of the Act was issued as the company did not make payment of the bill. The Company thereafter approached the Consumer Grievances Redressal Forum questioning legality of the notice. The Forum held that disconnection of the electric line of the Petitioner was being held legal. Supply to the Company was disconnected again. Both the Appellant and the Respondent company had assailed the order of the forum invoking the Constitutional Writ jurisdiction of the High Court. The company's writ petition challenged that part of the order in which disconnection of electricity was held to be legal. In the first writ petition filed by the company, by an interim order, the High Court had directed deposit of sum for the purpose of reenergising supply. A fresh bill was again raised along with notice for disconnection. It included AMG and DPS for the period disallowed by the Forum. The industry challenged the same again before the Forum. The demand was stayed by the Forum. Without challenging the order of the Forum, the Board in complete disregard refused to accept even current payments, and disconnected supply of the Industry again. The writ petition was preferred against the same by the Industry. The Single Judge found the act of disconnection without considering the request for instalments was unwarranted. It was held that such default on the part of the company did

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128 MANU/SC/0415/2020.

not constitute neglect to pay as contemplated in Section 56 of the 2003 Act. In appeal, the Appeal Bench affirmed the reasoning and findings of the Writ Court, and held that the initial disconnection itself being illegal, the Board did not have the authority to charge any AMG and DPS not only for that period but also for each and every subsequent period of illegal disconnection also, because it failed to revise the bills.

**Issue:** Whether the Gaya Roller Flour Mills Pvt. Ltd. is a Consumer within the definition of Sec. 2(1)(d) of Consumer Protection Act, 2019?

**Decision:** The Supreme Court while Dismissing the appeal held that the Respondent company fits this description that a case was sought to be made out that since the company was a high-tension commercial consumer, they could not apply to the Forum. On this count, definition of consumer as specified in Clause 2(1)(g) of the Consumer Grievance Redressal Forum and Electricity Ombudsmen Regulation, 2006 was sought to be relied upon. There was no reason to denude the company of its locus to approach the forum. The object of use of electricity may be to produce items for sale, but use or consumption of electricity by them was for their own factory. (ii) The Board could not have had ignored the directive of a statutory forum and imported their own perception of what was legal to proceed against a consumer. (iii) There was no dispute on obligation of the Respondent company to pay the AMG charges, at least so far as first bill was concerned. Its representation for instalment was in the nature of a mercy plea. Going by that factor alone, this court might not have had accepted the finding of the High Court that the consumer did not neglect to pay so as to warrant the disconnection provision contained in Section 56 of the Act. But in respect of Respondent company, eventually instalment was granted subsequent to the period of disconnection. Once that plea for instalment payment was accepted and agreement was entered into for clearing the dues, it demonstrated willingness to pay on the part of the company of the dues in a manner acceptable to the Appellant Board. Such plea of the company was accepted after keeping the matter pending for a long time. In such circumstances, the High Court was right in giving its finding that the act of disconnection was arbitrary.

Non Installation of Meter and charging extra electric dues amount to deficiency in Service.

**Manager, CESU Angul Elect. Division and Ors. v. Gangadhar Das<sup>129</sup>**

**Facts:** The case of the Complainant in brief is that the complainant is a ‘consumer’ under the Opposite Parties since 1995 but no meter was installed. But the Opposite Parties Department was collecting dues for a consolidated amount on the basis of 1.5 KW and he has been regularly paying the said amount against Consumer No. 401-1920. On 31.1.2012, there was inspection made by the Department by the squad of the Opposite Parties and they found that the Complainant was using energy 5 K.W. beyond its capacity of 1.5 K.W. During inspection, there was some altercation between the J.E., Electrical and the Complainant with regard to non-installation of meter and extra electric dues charged. It is alleged that against the energy being consumed beyond the load the Opposite Parties Department whimsically made provisional assessment to which the Complainant made resistance as the Opposite Parties without having installed any meter made arbitrary charges showing same 5 K.W., for that he is put into mental harassment. As such, the complaint was filed before the District Forum. District Forum came to the conclusion that there is deficiency of service because the Opposite Parties have not behaved properly to the Complainant during the investigation on 31.1.2012 and made extra charges without any sort of sympathy to the Complainant. Accordingly, they directed to remove the deficiencies and directed to pay Rs. 10,000/- towards compensation besides litigation cost of Rs. 2,000/- to the Complainant. This appeal is directed u/s. 15 of the Consumer Protection Act, 1986 against the order passed by the learned district forum.

**Issue:** (i) Whether the Complainant has proved deficiency in service on the part of the OPs so as to allow the reliefs prayed for? (ii) Whether the complaint petition which arises out of act done by elect. Division under the electricity act is maintainable at District forum?

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129 MANU/SY/0003/2020.

**Decision:** Court held that complaint pleading that he protested about non-installation of meter but the J.E., Electrical asked him to install his own meter as per the provision of law but there are some unpleasant argument held between the J.E., Electrical and the Complainant. However, Complainant states in the complaint that he finally paid the enhanced electric dues but filed the complaint due to misbehaviour by the J.E., Electrical. Opposite parties filed written version accompanied with affidavit stating that on 31.1.2012, he has paid visit and found Complainant was using electric energy for a load of 5 KW against contract load of 1.5 KW and no meter was found there. So he prepared report which is not disputed and prepared the necessary arrears bills against extra electric dues used by the Complainant. The inspection report (Annexure - A) and authorisation slip shows that Complainant was using 5 KW load electric energy against contract load of 1.5 KW for which load was enhanced. Further notice for provisional assessment filed by the Opposite Parties shows that on 28.2.2012 provisional assessment bill has been issued for Rs. 3,278/- . The money receipt filed by the Complainant shows that he has paid enhanced bill for Rs. 4,540/- . From the above discussion, we do not find any departure on the duty discharge by the Opposite Parties. **So far unpleasant behavior concerned, Consumer Forum is not the Forum to decide.** So the finding of District Forum with regard to deficiency of service on the part of the Opposite Parties is deplorable as it has found deficiency of service for the behavior meted out to the Complainant by the Opposite Parties.

Now, the question arises whether the complaint is maintainable?

Taking the view of the observation made in the *U.P. Power Corporation Ltd. and others v. Anis Ahmad*, Court held:

- (i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of “service” as defined under Section 2(1)(o) or “complaint” as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

- (ii) A “complaint” against the assessment made by assessing Officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.
- (iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to “unfair trade practice” or a “restrictive trade practice adopted by the service provider”; or “if the consumer suffers from deficiency in service”; or “hazardous service”; or “the service provider has charged a price in excess of the price fixed by or under any law.

With due regard to the aforesaid decision, Court find, in the instant case, the complainant could have agitated the matter before the higher authority u/s. 127 of the Electricity Act, 2003.

Carelessness of Electricity Board

**Managing Director-Cum-Chairman A. P. Transco, Hyderabad Telangana and others v. Mohd. Noorullha Shareef and others.<sup>130</sup>**

**Facts:** The Complainant alleges that he along with his brother was coming from the mosque when one snapped electrical wire was hanging from the electric pole and the brother of Complainant Mohd. Habeebulah Shareef came into contact with that live wire and was electrocuted. The Complainants informed the Opposite Parties A. P. Transco and post-mortem was also conducted, wherein the cause of death was found to be electrocution. The Complainants then filed a consumer complaint before the State Commission alleging deficiency against the opposite parties.

The complaint was resisted by the Opposite Parties mainly on the ground that the Complainants were not consumers as no services have been offered

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130 2018 SCC OnLine NCDRC 838.

by the Opposite Parties on consideration to the Complainants. It was stated that because of storm that occurred previous night, one tree fell on the electric lines, thus the wire was hanging and as per their rules, the Opposite Parties have already paid a sum as compensation. Thus, the incident happened because of a natural calamity and no negligence can be imputed to the Opposite Parties.

The State Commission partly allowed the complaint. Both the Complainants and the Opposite Parties filed an appeal against the State Commission's order. Both the appeals were heard together by the National Commission.

**Issue:** Whether the complainants are consumers & whether there is a deficiency in service by OP?

**Decision:** The Opposite Parties contended that the complaint of deficiency of service cannot be maintained as there was no contract between the Complainants and them. The National Commission looked into certain cases decided by the Supreme Court and saw that the Complainant, in such conditions, is impliedly considered to be a consumer. Moreover, the strict liability principle makes it a must for the Opposite Parties to pay compensation in such cases. But the National Commission did not find merit in the arguments of the Complainants that the amount of compensation should be increased.

Thus, the National Commission partly allowed the appeal filed by OP and modified the amount to be paid from Rs. 18,00,000/- to Rs. 12,00,000/-.

**Chhattisgarh State Power Distribution Co. Ltd. v. Mukesh Kumar Satnami 2 Ors<sup>131</sup>**

**Facts:** A regular domestic electric connection was given to the house of Firtu Ram Lahre in village Kenapali against BP Number 1003531960 by the Chhattisgarh State Power Distribution Co. Ltd. (Petitioner). Rukhmani Bai wife of Mukesh Satnami is a consumer of the said electricity. The Respondent had registered the complaint dated 18.05.2015 stated that the neutral wire transmitted by the Petitioner to their house had been broken. He duly

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<sup>131</sup> Revision Petition No. 2225 /2017 (NCDRC).

informed the department of this fact. The electricity department however, did not pay any heed to his complaint. On 19.05.2015, wife of Firtu Ram Lahre switched on the cooler at about 12.00 noon and due to the electric current flowing through it she got electrocuted due to the electric current which was leaking in the cooler which was due to the snapping of the neutral wire she became unconscious and was immediately taken to the hospital but she was declared brought dead in the hospital. A police complaint was lodged with PS Kharsia and the post mortem report was also got done. In the post mortem report the cause of the death was death due to electric current. The husband and her children has alleged that there was a deficiency in service on the part of the Petitioner and claimed a compensation to the tune of Rs. 16,77,000/- along with litigation expenses before the District Forum. The District Forum Allowed the complaint rejecting the contention of the Petitioner that Respondents have never informed about the breaking of the neutral wire to the department and the documents to this effect was forged and fabricated and directing the Petitioner to pay amount of Rs. 5,58,000/- on account of compensation due to deficiency in service to the Complainant within a period of 30 days; interest at the rate of 9% per annum with effect from the date of institution of Complainant and Rs. 2000/- to the Complainant within a period of one month. Aggrieved by the decision of the District forum the petitioner appealed before the State Commission. The state Commission dismissed the appeal on 01.03.2017 and held that there was a deficiency in service. Hence, the present revision petition has been filed against the judgment dated 01.03.2017 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur.

**Issue:** 1. Whether there is any Deficiency in Service?

2. Whether there was any illegal, infirmity or jurisdictional error and miscarriage of justice is caused to the petitioner?

**Decision:** The revision petition filed before the National Commission is devoid of the merits, and hereby dismissed the petition as the consumer had duly informed the Petitioner about the snapping of the neutral wire and the current flowing in the domestic appliances including cooler. Even rule 5.5 cast duty upon the licensor department to do repairs and no other person is

permitted to carry out any repair. Rule 5.6 states that the department shall ensure continuity of the supply of electrical energy to the consumer.

**Smt. Munesh Devi, W/o Late Shri Jagbir Singh v. The U.P. Power Corporation Ltd., and others<sup>132</sup>**

**Facts:** The facts of the case are the complaint case filed before the Commission by Smt. Munesh Devi, widow of late Shri Jagbir Singh, the Complainant had claimed a sum of Rs. 25,00,000/- because the death of her husband was caused due to the transformer installed and maintained by the Opposite Parties, while he was returning home from duty. The transformer of the Uttar Pradesh Power Corporation Ltd., (UPPCL, in short), as Opposite Party no.1, suddenly burst and the hot oil of the transformer fell upon her husband, he received 85% burn injuries. He was taken to the Hospital, where he succumbed to burn injuries. He was an employee of the Mahanagar Telephone Nigam Ltd., ('MTNL', in short) at Delhi. The Complainant claimed Rs. 25.00 lakhs as compensation under different heads before the Opposite Parties. The transformer in question was very old and rusty. The OPs were entrusted with the job of maintenance, removal and replacement of equipment's which are needed for the generation and supply of electricity. The local inhabitants informed the OPs about the pathetic condition of the transformer but the OPs did not pay any heed to it. The deceased at the time of the death was drawing a monthly salary in the sum of Rs. 6,275/-. And he passed away when his age was 38 years 7 months. The Complainant, at the time of her husband's death, was about 33 years and she has to look after her three minor children. The Complainant approached the civil court, Hon'ble High Court and Hon'ble Supreme Court, respectively, on the ground that she was unable to pay a sum of Rs. 1,00,000/- as court fee and wanted exemption from paying the court fee, but her request was not allowed. It is prayed that Complainant be awarded a sum of Rs. 25,00,000/- on account of the deficiency, negligence and dereliction of duty on the part of the OPs.

**Decision:** The Commission held that the OP to pay a sum of Rs. 25,00,000/- to the Complainant, along with interest @ 9% p.a. from 08.02.2000, from

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<sup>132</sup> 2013 SCC OnLine NCDRC 173.

the date of death of the Complainant's husband. Consequently, the commission awarded her compensation in the sum of Rs. 10,00,000/- and litigation charges in the sum of Rs. 2,00,000/-.

Charging excess amount

**Proton Steels Limited, Odisha v. Superintending Engineer, Electrical, Orissa State Electricity Board and others<sup>133</sup>**

**Facts:** The Complainant M/s Proton Steels Ltd. is a small scale industry. Its plant was being supplied electricity by the Odisha State Electricity Board, the OP with a sanctioned load of 445 KVA. Since the electric meter of the Complainant was not working since November, 1993, average bills were being raised and paid regularly. In the months of August/September, 1994, the Complainant company was required to suspend its production for the purpose of overhauling and major maintenance of its plant. Accordingly, vide its letter dated 30.07.1994, the Complainant intimated to the Opposite Party that it would be using load of 15 KVA between the period 01.08.1994 to 15.09.1994. When the Complainant received the bill for the month of August, 1994, the same was found to be on average basis, as in the preceding months, without taking into consideration the fact that production in its plant was suspended during the aforesaid period. On protest, the Opposite Party started verifying the production details with the electricity bill supplied.

In the meanwhile, the Complainant company continued to pay the bills issued to it except the bills in question. With no positive response about the bills that were questioned and the threat of the electricity supply being disconnected, the Complainant filed a complaint before the District Forum. The District Forum, on appraisal of evidence, directed the Opposite Party to raise a bill for the suspended load. Aggrieved by the same, the Opposite Party appealed to the State Commission. Since the intimation given to the Opposite Party was not seven days prior to the period of suspension of load, the State Commission decided the appeal in favour of the Opposite Party. Aggrieved by the same, the present revision petition was filed by the Complainants.

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133 2018 SCC OnLine NCDRC 174.

**Issue:** Whether there is deficiency of service on part of the Respondents for raising a bill for a load higher than the amount that was used?

**Decision:** The National Commission observed that the State Commission had erroneously considered the condition of seven days prior notice from regulations that were published in the Gazette in 1995 while the present bills were issued in 1994. Moreover, as per Industrial Policy of 1989 which is attracted in the present case, an industrial unit, covered under the policy, will be liable to pay the electricity charges on the basis of actual monthly consumption of energy and no minimum charges will be levied in respect of the industrial units.

National Commission dismissed the State Commission's order and directed the Opposite Party to raise a new bill for the suspended load and to refund the excess amount and surcharge that was paid by the Complainant.

#### Irregular electricity supply

**Ashok Kumar Singh v. Bihar State Electricity Board, Patna and others<sup>134</sup>**

**Facts:** Complainant had taken industrial connection of electricity from Respondent for his business under an agreement and deposited security amount of Rs. 13,750/-. Supply of electricity by Respondent was not proper and regular; so, Complainant made complaint and further requested to refund security money. Later, respondent illegally disconnected supply of electricity of the Complainant. Complainant filed complaint before District Forum for refund of security and compensation. Respondent contended that as per agreement, consumer was required to pay minimum charges for 2 years and Complainant has not paid a sum of Rs. 29,290/- as dues of electricity bills from February, 1994 to April, 1994, his connection was disconnected. District Forum allowed the complaint and directed Respondent to refund security amount subject to depositing Rs. 29,290/- as arrears of dues and further awarded Rs. 10,000/- as compensation for business loss and Rs. 25,000/- as compensation for mental agony – On appeal, State Commission modified order of District Forum and reduced compensation to Rs. 5,000/- and further

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<sup>134</sup> 2013 SCC OnLine NCDRC 339.

observed that Complainant will be entitled to claim 9% p.a. interest on the security amount and Respondent will be entitled to claim 9% p.a. interest on electricity bill dues against which, this revision petition has been filed.

**Decision:** The question before National Commission was whether State Commission was right to reduced compensation. It was held that electricity connection of the Complainant was disconnected on 28-4-1994, whereas order for disconnection was given on 4-9-1994. It appears that on account of complaint of the Complainant regarding irregular supply of electricity and refund of security money, Complainant's connection was disconnected by the concerned employee even before the order of the Asst. Engineer. Moreover, State Commission has already upheld grant of compensation to the extent of Rs. 5,000/- . As per agreement, Complainant was bound to pay minimum charges for 2 years and on account of non-payment of electricity dues, Complainant's connection has been disconnected after 16 months of connection. Thus National Commission was in view that State Commission has not committed any error in reducing amount of compensation from Rs. 35,000/- to Rs. 5,000/- . Hence revision petition dismissed.

Wrongful disconnection of power supply

**Purshottam Behl S/o Late Shyam Sunder Behl v. B.S.E.S. Rajdhani Power Limited (Successor-in interest of Erstwhile Delhi Vidyut Board)<sup>135</sup>**

**Facts:** Appellant filed complaint against Respondent before the State Commission on grounds of unfair trade practice and deficiency in service and sought a total compensation of Rs. 9,87,546/- . Appellant submitted that he had applied for 2 KW electricity load and also executed an agreement in the form supplied by the Respondent. Appellant received a show cause notice from an Assistant Engineer of the Respondent informing him that a report of theft of electricity had been lodged against him in Police Station as the electricity load consumed by him had been assessed as 9.312 KW against the sanctioned load of 2 KW and consequently a sum of Rs. 2,42,998.75/- ps. was demanded from him. Further submitted that it was with malafide intention that this complaint had been made by the

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135 2013 SCC OnLine NCDRC 302.

Respondent's Assistant Engineer and Lineman to whom he had refused to pay a bribe. The electricity connection provided to the Appellant had also been illegally disconnected. State Commission, quashed the demand of Rs. 2,42,998.75/- ps. raised by the Respondent against the Appellant on account of electricity consumption. However, no other relief as prayed for was granted.

**Issue:** Whether the disconnection of power supply by the Respondent is made liable to pay compensation?

**Decision:** The question before National Commission was whether order of the State Commission about compensation could be upheld. It was held that Respondent had wrongly disconnected appellant's power supply and, therefore, the sum of Rs. 2,42,998.75/- ps. demanded by it was not justified - Respondent had accepted this order and had refunded the amount - Appellant needs to be compensated for the 6 long years during which period he was wrongly deprived of the electricity connection - After taking into account the facts and circumstances of this case, a compensation of Rs. 2 Lakhs was justified and reasonable - Order of the State Commission to be partly modified and Respondent was directed to also pay the appellant a sum of Rs. 2 lakhs as compensation - Appeal partly allowed.

Electricity being used for commercial purpose

**Saroj Kumari v. Executive Engineer, Dakchhinachal Vidyut Vitran Nigam Ltd.<sup>136</sup>**

**Facts:** The Complainant had obtained an electricity connection from the Respondent for domestic purposes. On the basis of an inspection, the Respondent demanded a certain sum on the ground that the electricity was being used for a commercial purpose. Aggrieved, the Complainant approached the District Forum challenging the assessment made by the Respondent. The case of the Respondent is that though the connection was sanctioned for domestic purposes, the same was being used by the Petitioner for a commercial purpose.

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136 (2020) SCC OnLine NCDRC 423.

**Issue:** Whether this complaint is maintainable before a Consumer Forum?

**Decision:** The Commission relied on the case of *U.P. Power Corporation Ltd. v. Anis Ahmed* where the Supreme Court had held that a consumer complaint against the assessment made under Section 126 of the Electricity Act is not maintainable. Since the case of the Respondent is that the electricity was being used by the Complainant for a commercial purpose, though the load was sanctioned for domestic purpose, this would be a case of the unauthorised use of electricity within the meaning of explanation under Section 126 of the Electricity Act. Therefore, the assessment made under the aforesaid provision of the Electricity Act could not have been challenged before a Consumer Forum.

## FOOD SECTOR

The Indian food and grocery market is the sixth-largest in the world, with official statistics and reports expecting it to cross USD 540 billion by 2020.<sup>137</sup> The food processing industry in India is ranked fifth worldwide in terms of production, consumption and export – it contributes about 14% to the manufacturing GDP and 13% to the export GDP of India.<sup>138</sup>

The food sector in India is also diverse, with food being procured/cultivated, stored and sold at local markets or corporate franchises. Increasingly, the online food delivery market is also growing rapidly in India with the rise of companies such as Swiggy, Zomato etc.

### CONSUMER ISSUES

The biggest concerns revolving food are with the quality of food- adulteration, false/misleading claims and advertisements, presence of harmful materials, improper packaging and storage, lack of assurance of quality of new products etc.

### FSSAI

The Food Safety and Standards Authority of India was established under the Food and Standards Act, 2006.<sup>139</sup> The purpose of the FSSAI is to lay down scientific standards for assessing the quality of food and regulating the manufacture, storage, distribution, sale and import of food in India.<sup>140</sup>

<sup>137</sup> Prabhod Krishna, ‘Indian Food Market Expected To Cross USD 540 Billion By 2020 – Suresh Prabhu, Union Minister For Commerce & Industry’ *Business World* (18 January 2018) <<http://www.businessworld.in/article/Indian-Food-Market-Expected-To-Cross-USD-540-Billion-By-2020-Suresh-Prabhu-Union-Minister-For-Commerce-Industry/18-01-2018-137731/>> accessed 14 July 2019.

<sup>138</sup> IBEF, ‘Indian Food Industry’ <<https://www.ibef.org/archives/detail/b3ZlcnZpZXcmMzcxNTImNDk0>> accessed 14 July 2019.

<sup>139</sup> Food and Standards Act 2006, s 4.

<sup>140</sup> FSSAI, ‘About FSSAI’ <<https://www.fssai.gov.in/cms/about-fssai.php>> accessed 14 July 2019.

In order to allow the Commissioner of Food Safety to perform their functions as provided in the Act<sup>141</sup>, the Food Safety and Standards Rules, 2011 were passed.<sup>142</sup> These rules lay down the procedure of investigation, sampling, analysis, appeals etc.

Based on its powers under Sec. 92(1) of the Act, the FSSAI has released multiple regulations and standards<sup>143</sup> which address the changes in the food sector due to development in food science, changes in consumption, introduction of new products etc.<sup>144</sup> These regulations have been briefly explained below:

1. Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011<sup>145</sup>
  - These regulations provide for the licensing and the registration of food businesses in India.
2. Food Safety and Standards (Food Product Standards and Food Additives) Regulation, 2011<sup>146</sup>
  - These regulations lay down the standards of quality for various food products and the use of food additives.
3. Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011<sup>147</sup>
  - These regulations provide for prohibition and restriction of sales of certain products, certain mixtures of products and products which do not meet the required quality standards.

141 Food and Standards Act, 2006, s 30(2).

142 Food Safety and Standards Rules, 2011, rule 2.1.1(2).

143 Food and Standards Act 2006, s 92(1).

144 FSSAI, 'Regulations' <<https://www.fssai.gov.in/cms/regulations.php>> accessed 14 July 2019.

145 Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011.

146 Food Safety and Standards (Food Product Standards and Food Additives) Regulation, 2011.

147 Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011.

4. Food Safety and Standards (Packaging and Labelling) Regulations, 2011<sup>148</sup>
  - These regulations lay down the standards for packaging and labelling of food, particularly, the information regarding the food article which must be provided.
5. Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011<sup>149</sup>
  - These regulations lay down the limits of potentially harmful materials which can be allowed to exist in food articles.
6. Food Safety and Standards (Laboratory and Sampling Analysis) Regulation, 2011<sup>150</sup>
  - These regulations lay down the list of notified laboratories and procedure to be utilised by laboratories for sampling of food.
7. Food Safety and Standards (Food or Health Supplements, Nutraceuticals, Food for Special Dietary Purpose, Functional Food and Novel Food) Regulation, 2016<sup>151</sup>
  - These regulations lay down the standards of quality for food supplements, nutraceuticals, dietary foods, functional and novel food articles.
8. Food Safety and Standards (Food Recall Procedure) Regulation, 2017<sup>152</sup>
  - These regulations lay down the procedure for recall of food.
9. Food Safety and Standards (Import) Regulation, 2017<sup>153</sup>
  - These regulations lay down the procedure for import of food articles into India.

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148 Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

149 Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011.

150 Food Safety and Standards (Laboratory and Sampling Analysis) Regulation, 2011.

151 Food Safety and Standards (Food or Health Supplements, Nutraceuticals, Food for Special Dietary Purpose, Functional Food and Novel Food) Regulation, 2016.

152 Food Safety and Standards (Food Recall Procedure) Regulation, 2017.

153 Food Safety and Standards (Import) Regulation, 2017.

10. Food Safety and Standards (Approval for Non-Specific Food and Food Ingredients) Regulation, 2017<sup>154</sup>
  - These regulations lay down the procedure for the approval of non-specified food and food ingredients.
11. Food Safety and Standards (Organic Food) Regulation, 2017<sup>155</sup>
  - These regulations lay down the standards of quality for organic food.
12. Food Safety and Standards (Alcoholic Beverages) Regulation, 2018<sup>156</sup>
  - These regulations lay down the standards of quality for alcoholic beverages.
13. Food Safety and Standards (Fortification of Food) Regulation, 2018<sup>157</sup>
  - These regulations lay down the standards of quality for fortificants i.e. a substance added to food to provide micronutrients.
14. Food Safety and Standards (Food Safety Auditing) Regulation, 2018<sup>158</sup>
  - These regulations lay down the procedure for recognition of auditing agencies and duties of the auditors.
15. Food Safety and Standards (Recognition and Notification of Laboratories) Regulation, 2018<sup>159</sup>
  - These regulations lay down the procedure for recognition of laboratories for development of methods of testing, validation, proficiency and training.

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154 Food Safety and Standards (Approval for Non-Specific Food and Food Ingredients) Regulation, 2017.

155 Food Safety and Standards (Organic Food) Regulation, 2017.

156 Food Safety and Standards (Alcoholic Beverages) Regulation, 2018.

157 Food Safety and Standards (Fortification of Food) Regulation, 2018.

158 Food Safety and Standards (Food Safety Auditing) Regulation, 2018.

159 Food Safety and Standards (Recognition and Notification of Laboratories) Regulation, 2018.

16. Food Safety and Standards (Advertising and Claims) Regulation, 2018<sup>160</sup>
  - These regulations lay down the principles for claims and advertisements about numerous aspects of a food article – the presence of additives, freshness, nutrition value etc.
17. Food Safety and Standards (Packaging) Regulation, 2018<sup>161</sup>
  - These regulations lay down the requirements for appropriate packaging of food articles.

## CASES

### Adulteration of milk

**Swami Achyutanand Tirth and Ors. v. Union of India (UOI) and Ors.**<sup>162</sup>

**Facts:** A writ petition was filed in public interest by the Petitioners highlighting the menace of growing sales of adulterated and synthetic milk in different parts of the country. The Petitioners are residents of the State of Uttarakhand, Uttar Pradesh, Rajasthan, Haryana and NCT of Delhi and have accordingly shown concern towards the sale of adulterated milk in their States. However, the issue of food safety being that of national importance, Union of India has also been made a party Respondent. The Petitioners allege that the concerned State Governments and Union of India have failed to take effective measures for combating the adulteration of milk with hazardous substance like urea, detergent, refined oil, caustic soda, etc. which adversely affects the consumers' health and seek appropriate direction. The Petitioners have relied on a report dated 02.01.2011 titled "Executive Summary on National Survey on Milk Adulteration, 2011" released by Foods Safety and Standards Authority of India (FSSAI) which concluded that on a national level, 68.4 per cent of milk being sold is adulterated. The Petitioners pleaded inaction and apathy on the part of the Respondents to take appropriate measure to rule out sale and circulation of synthetic milk and milk products across the

160 Food Safety and Standards (Advertising and Claims) Regulation, 2018.

161 Food Safety and Standards (Packaging) Regulation, 2018.

162 AIR 2016 SC 3626.

country which according to the Petitioners has resulted in violation of fundamental rights of the Petitioners and public at large guaranteed under Article 21 of the Constitution of India. The Petitioners, therefore, seek for a writ of mandamus directing Union of India and the concerned State Governments to take immediate effective and serious steps to Rule out the sale and circulation of synthetic/adulterated milk and the milk products like ghee, mawa, cheese, etc.

**Issue:** Whether milk is being adulterated with chemicals and there was inaction by State Governments?

**Decision:** The Writ Petition is disposed of with the following directions and observations: (i) Union of India and the State Governments shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner. (ii) States shall take appropriate steps to inform owners of dairy, dairy operators and retailers working in the State that if chemical adulterants like pesticides, caustic soda and other chemicals are found in the milk, then stringent action will be taken on the State Dairy Operators or retailers or all the persons involved in the same. (iii) State Food Safety Authority should also identify high risk areas (where there is greater presence of petty food manufacturer/business operator etc.) and times (near festivals etc.) when there is risk of ingesting adulterated milk or milk products due to environmental and other factors and greater number of food samples should be taken from those areas. (iv) State Food Safety Authorities should also ensure that there is adequate lab testing infrastructure and ensure that all labs have/obtain NABL accreditation to facilitate precise testing. State Government to ensure that State food testing laboratories/district food. Food and Public Distribution, Department of Consumer Affairs, Government of India, New Delhi 16 laboratories are well-equipped with the technical persons and testing facilities. (v) Special measures should be undertaken by the State Food Safety Authorities (SFSA) and District Authorities for sampling of milk and milk products, including spot testing through Mobile Food Testing Vans equipped with primary testing kits for conducting qualitative test of adulteration in food. (vi) Since the snap short survey conducted in 2011 revealed adulteration of milk by hazardous substances including chemicals,

such snap short surveys to be conducted periodically both in the State as well as at the national level by FSSAI. (vii) For curbing milk adulteration, an appropriate State level Committee headed by the Chief Secretary or the Secretary of Dairy Department and District level Committee headed by the concerned District Collector shall be constituted as is done in the State of Maharashtra to take the review of the work done to curb the milk adulteration in the district and in the State by the authorities. (viii) To prevent adulteration of milk, the concerned State Department shall set up a website thereby specifying the functioning and responsibilities of food safety authorities and also creating awareness about complaint mechanisms. In the website, the contact details of the Joint Commissioners including the Food Safety Commissioners shall be made available for registering the complaints on the said website. All States should also have and maintain toll free telephonic and online complaint mechanism. (ix) In order to increase consumer awareness about ill effects of milk adulteration as stipulated in Section 18(1)(f) the States/Food Authority/Commissioner of Food Safety shall inform the general public of the nature of risk to health and create awareness of Food Safety and Standards. They should also educate school children by conducting workshops and teaching them easy methods for detection of common adulterants in food, keeping in mind indigenous technological innovations (such as milk adulteration detection strips etc.) (x) Union of India/State Governments to evolve a complaint mechanism for checking corruption and other unethical practices of the Food Authorities and their officers.

Liability of manufacturer for sale of sub-standard drinks

**Hindustan Coca-Cola Beverages Pvt. Ltd. v. Purushottam Gaur<sup>163</sup>**

**Facts:** The Complainant approached District Forum alleging that Coca Cola Company was responsible for sale of sub-standard drink. The Complainant demanded hefty compensation from the Company for deficiency in service. The company, in its defence, argued that there is no evidence that the said bottle was actually manufactured by them. They further contended that the product is spurious and that their Bottling Plant is of latest technology with

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<sup>163</sup> 2014 SCC OnLine NCDRC 7.

high standard of hygiene and there is no question of any insect entering into the bottle. The District Forum dismissed the complaint but the State Commission accepted the appeal filed by the Complainant and granted a sum of Rs. 10,000/- in his favour and imposed costs in the sum of Rs. 3,000/- upon the Company. A laboratory report was also submitted before NCDRC in the matter which said that, “The visual examination of bottle shows one large insect (approximately sized 10mm) floating on top of the bottle; two small insects and several insects body parts are suspended in the fluid”. In the report, the laboratory also said that some of the features of the bottle in question were different from a “Fanta” bottle that was purchased from the market but, to be sure, the laboratory would need bottle samples from the batch code printed on the bottle.

**Issue:** Whether the company was negligent in producing the bottle as well as the soft drinks called ‘Fanta’?

**Decision:** After considering all the evidences, NCDRC held that as the Company did not try to help and provide any assistance to the Laboratory personnel and no efforts were made by the Company regarding the origin of that bottle. *Prima facie*, it appears that this bottle belongs to the Company. The Court added that the case stands proved against the company and thereby dismissed the revision petition. While upholding the order of State Commission, NCDRC awarded Rs. 10,000/- compensation to the consumer who found insects in “Fanta” bottle.

#### Sale of impure seeds

#### **Avon Beej Company v. Anoop Singh<sup>164</sup>**

**Facts:** This is a revision petition filed under Section 21(b) of the Consumer Protection Act, 1986. The Complainant had purchased some paddy seeds from the respondent company for sowing in the land. The Respondent assured that the seeds were of the best quality and without adulteration. The Complainant alleged that despite sowing the seeds at the right time by using

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<sup>164</sup> 2020 SCC OnLine NCDRC 212.

scientific agricultural methods, only 60% crop was yielded and the remaining crop was destroyed due to poor quality of seeds. The Complainant thus alleged deficiency in service. The Respondent claimed that the seeds were not defective and the Complainant's crop was destroyed due to his own improper management as he did not sow the right quantity of seed per acre of land.

**Issue:** Whether the Complainant is entitled to get compensation and whether the court needs to exercise its revision jurisdiction?

**Decision:** The court relied on the report of the Agriculture Experts where it was found that 31% seeds were 'off-type' which means that were not of the same variety as the other seeds. Thus, it was established that the seeds were not pure. The court observed that the report of the experts was based on spot-inspection and can thus be relied upon to evaluate the quality of seeds. The order of the State Commission, thus, did not suffer from any perversity or illegality and had properly appreciated all material on record. Thus, it did not call for any interference in exercise of this court's Revisional Jurisdiction u/s 21(b) of the Act.

Summary redressal available to farmer

**Nandan Biomatrix v. S. Ambika Devi<sup>165</sup>**

**Facts:** The Complainant (respondent herein) entered into an agreement with the Appellant to buyback safed *musli*, a medicinal crop. Accordingly, she purchased 750 kgs of wet *musli* from the Appellant and cultivated the same. The Appellant was to buy back the produce at minimum price from the respondent. The Appellant failed to buy back her produce which led to destruction of a greater part of the crop.

**Issue:** Whether the Respondent is a "consumer" within the meaning of the Consumer Protection Act, 1986?

**Decision:** The NCDRC held that the Respondent was a "consumer" within the meaning of Section 2(1)(d) of the 1986 Act it held that the covenants entered into between the parties were in the nature of both sale of product

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165 AIR 2020 SC 3136.

and rendering of service, since the Appellant had agreed to provide wet *musli* for growing for the Respondent. Further, we cannot say that the agreement was entered into for a commercial purpose because the Respondent had started cultivation of *musli* for eking out a livelihood for herself. Thus, when a farmer purchases goods or avails services in order to grow produce in order to eke out a livelihood, the fact that the said produce is being sold back to the seller or service provider or to a third party cannot stand in the way of the farmer amounting to a “consumer”.

Whether complainant is a consumer under the Consumer Protection Act, 1986

**Food Safety Commissioner v. Anand Unni krishnan & 2 Ors.<sup>166</sup>**

**Facts:** The Complainant / Respondent purchased food articles from the store of the respondent Pantaloons Retail India Ltd. The said food articles were allegedly found to be insect infested. The vegetables which he had purchased from the aforesaid store was allegedly found to be rotten. This is also the case of the Complainant that having consumed the aforesaid food articles, he and his family members fell ill and had to incur substantial expenditure on their treatment. He requested the Petitioner Food Safety Commissioner of Kerala to take appropriate action against the seller of contaminated food articles under the provisions of Food Safety Act. No action, however, was taken. The Complainant/Respondent, therefore, approached the concerned District Forum by way of a consumer complaint impleading the sellers of the food articles as well as the Food Safety Commissioner as the Opposite Parties in the complaint. The District Forum vide its order dated 31.3.2014 allowed the complaint not only against the seller of the goods but also against the Petitioner. The seller of the goods were directed to pay the compensation quantified at Rs. 1 lakh whereas the Petitioner was directed to pay the compensation quantified at Rs. 5,000/-, to the complainant. The Petitioner approached the concerned State Commission by way of an appeal. The said appeal having been dismissed, the Petitioner is before this National Commission by way of this revision petition.

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166 Revision Petition No. 36/2017 (NCDRC).

**Issue:** Whether alleged failure to take appropriate action in terms of the Food Safety Act against the seller of the alleged contaminated goods fall under the Consumer Protection Act?

**Decision:** Admittedly, the alleged contaminated goods were purchased by the Complainant from the store of Pantaloons Retail India Ltd., without involvement of the Petitioner. No consideration was paid by the Complainant to the Petitioner nor did he hire or avail its services. In taking action in terms of the Food Safety Act, the Petitioner performs its statutory obligations and does not render service to a person who buys goods from a private person. No element of rendering services as understood in the context of Consumer Protection Act is involved in performance of the said statutory obligations. Therefore, neither the Complainant can be said to be the consumer of the Petitioner nor was there any scope for awarding compensation under the provisions of the Consumer Protection Act against the Petitioner, on account of the alleged failure to take appropriate action in terms of the Food Safety Act against the seller of the alleged contaminated goods. If the Petitioner had failed to perform its statutory obligations under the Food Safety Act despite receipt of complaint from the Complainant, the appropriate remedy for the Complainant was to approach the concerned High Court by way of a writ petition and a consumer complaint against the Petitioner was entirely misconceived. The impugned orders to the extent they pertain to the petitioner - Food Safety Commissioner are set aside and the complaint is consequently dismissed only against the Petitioner. The revision petition stands disposed of. It is made clear that dismissal of the complaint qua the Petitioner will not come in the way of the Complainant availing such remedy other than filing a consumer complaint as may be available to him in law against the Petitioner.

## HOTELS & RESTAURANTS

As per official reports and statistics, the tourism and hospitality sector in India was worth USD 15.24 trillion in 2017 and it is expected to be worth USD 32.05 trillion in 2028.<sup>167</sup> This is because of the diverse tourist destinations in India – cultural, religious and spiritual, eco-tourism, medical etc. and government initiatives such as Incredible India which promote India as a tourist destination<sup>168</sup>, Swadesh Darshan and PRASHAD for analysing the funds and adherence to schemes<sup>169</sup> and the ‘Adopt a Heritage’ project for development of heritage sites<sup>170</sup>.

A crucial component of the tourism and hospitality sector are hotels and restaurants. As per the India Tourism Statistics 2018, there were around 1784 approved hotels and 9,11,197 hotel rooms in 2017.<sup>171</sup> It is clear that as tourism in India increases, the number of hotels and restaurants will only keep on increasing.

### CONSUMER ISSUES

The major consumer problems relating to hotels and restaurants are as follows<sup>172</sup>:

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- 167 IBEF, ‘Indian Tourism and Hospitality Industry Analysis’ <<https://www.ibef.org/industry/indian-tourism-and-hospitality-industry-analysis-presentation>> accessed 14 July 2019.
  - 168 Incredible India <<https://www.incredibleindia.org/content/incredibleindia/en.html>> accessed 14 July 2019.
  - 169 Press Information Bureau, ‘Foreign Tourist Arrivals in the country’ (9 July 2019) <<http://pib.nic.in/newsite/pmreleases.aspx?mincode=36>> accessed 14 July 2019.
  - 170 Adopt A Heritage <<https://www.adoptaheritage.in/>> accessed 14 July 2019.
  - 171 Ministry of Tourism, ‘India Tourism Statistics 2018’ 112 <<http://tourism.gov.in/sites/default/files/Other/India%20Tourism%20Statistics%202018.pdf>> accessed 14 July 2019.
  - 172 ‘Challenges and opportunities in the Indian hospitality sector’ (*Express Food & Hospitality*, 8 January 2019) <<https://www.foodhospitality.in/management/challenges-and-opportunities-in-the-indian-hospitality-sector/413480/>> accessed 14 July 2019.

1. Lack of qualified manpower and management.
2. False/misleading information about the facilities provided by the hotel.
3. Problems in booking and cancellation.
4. Loss of personal belongings in the hotel premises.

### **MINISTRY OF TOURISM**

As there is no independent regulator of the hotel and restaurant sector in India, the Ministry of Tourism has released several guidelines:

1. The Guidelines for Project Approval and Classification of Tented Accommodation, 2015 seek to provide standards for classification of camping facilities in forests, deserts and riversides.<sup>173</sup>
2. The Guidelines for Approval & Classification/Re-classification of Apartment Hotels, 2013 seeks to provide standards for classification of hotels into categories of 5 star deluxe, 5 star, 4 star and 3 star.<sup>174</sup>
3. The Guidelines for Approval of Online Travel Aggregators, 2018 lays down the procedure to be followed by online travel aggregators to be officially recognised.<sup>175</sup>
4. The Guidelines for Approval of Guest Houses, 2009 lays down the standard requirements for a guest house.<sup>176</sup>
5. The Guidelines for Approval of Stand Alone Restaurants, 2012 lay down the standard requirements for a stand alone restaurant.<sup>177</sup>
6. The Guidelines for Classification of Heritage Hotels, 2014 lay down the standards for classification of heritage hotels.<sup>178</sup>

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<sup>173</sup> Guidelines for Project Approval and Classification of Tented Accommodation, 2015.

<sup>174</sup> Guidelines for Approval & Classification/Re-classification of Apartment Hotels, 2013.

<sup>175</sup> Guidelines for Approval of Online Travel Aggregators, 2018.

<sup>176</sup> Guidelines for Approval of Guest Houses, 2009.

<sup>177</sup> Guidelines for Approval of Stand Alone Restaurants, 2012.

<sup>178</sup> Guidelines for Classification of Heritage Hotels, 2014.

7. The Guidelines for Approval of Motel Projects, 2015 lays down the standard requirements for a motel.<sup>179</sup>

## CASES

### Aadhaar Card not a valid document for travel to Nepal

#### **Spicejet Ltd. v. Dinesh Kumar & Anr.**<sup>180</sup>

**Facts:** Commission was hearing a revision petition against the order of the State Commission of Punjab. The point of contention was that the Complainant namely Dinesh Kumar had booked a ticket Delhi – Kathmandu – Delhi through the online travel co., departing from Delhi on 05.07.2013. He had produced his e-ticket and Aadhaar card at the airlines company's check-in counter. The airlines company did not accept Aadhaar card as a valid/acceptable travel document for travel to Nepal (Kathmandu) and refused to issue a boarding pass. The District forum allowed the complaint, holding the airlines company liable, and dismissed the complaint against the online travel company. The State Commission dismissed the appeal of the airlines company. In this case, the petition was filed by the airlines company under section 21(b) of the Consumer Protection Act, 1986 before National Commission against the said Order of the State Commission.

**Issue:** Whether Aadhar card can be considered a valid document to travel to Nepal?

**Decision:** Commission while passing the order noted that the information on the e-ticket does not specifically mention Aadhaar card to be a valid/acceptable travel document for travel to Nepal and the instructions of the Bureau of Immigration specifically proscribe Aadhaar (UID) card as a valid /acceptable travel document for travel to Nepal/Bhutan. Rejecting the argument made on behalf of the Complainant that “Aadhaar card” falls within “any other ID issued by Government of India” mentioned on the e-ticket as “erroneous”, Commission said that Aadhaar number is a 12-digit random

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179 Guidelines for Approval of Motel Projects, 2015.

180 Revision Petition 1867 of 2016 (NCDRC).

number issued by the Unique Identification Authority of India to the residents of India after satisfying the verification process laid down by the said Authority, and can in no manner be construed to be “any other ID issued by the Government of India” in the specific context of it being a valid/ acceptable travel document for travel to Nepal. Commission found that the District Forum has erred in allowing the complaint against the airlines company and the State Commission has erred in dismissing the appeal of the airlines company and set aside the orders of both District Forum and the State Commission. It also found the complaint filed by the Complainant Dinesh Kumar to be frivolous and vexatious within the meaning of section 26 of the Consumer Protection Act, 1986 dealing with dismissal of frivolous or vexatious complaints. The Commission dismissed the complaint with stern advice of caution to the Complainant through imposition of cost of Rs. 10,000/- to be deposited by the Complainant with the Consumer Legal Aid Account of the District Forum within four weeks of the pronouncement of this Order, the objective being to emphasize that consumer protection fora are not meant to be tools for creating nuisance by filing frivolous and vexatious complaints.

Changing Tour Package at last minute is deficiency in Service

**Make My Trip Pvt. Ltd. v. Manabendra Saha Roy<sup>181</sup>**

**Facts:** Manabendra Roy had booked a tour for four persons to Dubai. The tour package worth Rs. 2,06,959/- was booked by him based on the itinerary sent to him by the Petitioner, Make My Trip, on 19 September, 2015, via email. The itinerary, though tentative, encapsulated sight-seeing at various tourist spots in Dubai. However, it was the case of the Respondent that the said itinerary was changed by the Petitioner without giving him any due notice. It was only three days before the tour when the Respondent visited the office of the Petitioner to collect his air tickets did he find that the itinerary had changed and was quite different from the earlier itinerary. The new final itinerary did not have any sight-seeing and he had in essence been charged

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<sup>181</sup> Revision Petition No. 1146 of 2018 (NCDRC).

for air tickets and hotel reservations only, he submitted. It was alleged that as per the Petitioner's cancellation policy, cancellation was permissible ten days prior to the scheduled date of departure and any cancellations made after that shall result in forfeiture of the deposited amount. Since the Respondent had discovered the change in itinerary only three days prior to the scheduled date of departure, he could not cancel the package and had to reluctantly accept the tour package. Such actions of the Petitioner, he submitted, amounted to restrictive and unfair trade practices and also deceptive trade practices. The Petitioner on the other hand contended that the Respondent was not entitled to any relief since he undertook the tour despite the knowledge of the final itinerary. Further, it was submitted that the itinerary initially provided to the Respondent clearly stated that it was 'tentative'; nothing in the itinerary was fixed and the package was subject to changes.

**Issue:** Whether the change of tour package at the last minute amounts to deficiency in service?

**Decision:** NCDRC stated that since the so-called final itinerary was given to the Respondent only three days prior to the scheduled date of departure, he was forced to undertake the tour to his utter dissatisfaction. Further, the word 'tentative' could not be misused to say that there was no fixed programme for any sight-seeing. The word 'tentative' only meant that in certain uncontrolled situation the itinerary may be changed by the Petitioner. Finally, the Commission held that the practice on part of the Petitioner, to induce its customer by sending an itinerary which they allege is a provisional one and later on completely changing the said itinerary and supplying a totally different itinerary after receiving the entire tour amount and leaving no option with the consumers for cancellation of the tour, threatening the customer with forfeiture of their entire amount, amounts to deceptive, restrictive and unfair trade practices. Accordingly, the order of the State Commission was upheld and the Petitioner was directed to pay an amount of Rs. 1,10,000/- to the Respondent as compensation for mental pain and agony.

Hotel Which Provides Swimming Pool Owes Its Guests A Duty Of Care

**The Managing Director, Kerala Tourism Development Corporation Ltd. v. Deepti Singh and Ors.<sup>182</sup>**

**Facts:** Deepti Sharma, (Complainant) had booked accommodation at Hotel Samudra at Kovalam for a family holiday. The spouse of Complainant entered swimming pool of hotel with his brother and few other guests of hotel were present in the pool at that time. All of a sudden, Satyendra Pratap Singh became unconscious and sank into pool. It was alleged by Complainant that, on witnessing incident, a foreigner who was in vicinity in the pool lifted him out of water. However, according to KTDC, lifeguard on duty also jumped into the swimming pool. Victim was pulled out of water and was taken to hospital. He died on same day. A complaint was filed before the NCDRC. NCDRC had held that, there was a deficiency of service on part of management of hotel, primarily for reason that, lifeguard on duty had also been assigned task of being a Bartender. NCDRC placed reliance on safety guidelines for water sports issued by National Institute of Water Sports, Ministry of Tourism Government of India. NCDRC held that assigning a lifeguard with an additional duty of attending to bar was liable to distract his attention, since he might not be able to keep a close watch on guests swimming in the pool. Moreover, while attending to his duties as a Bartender, employee would necessarily have to leave the pool, even for a short period of time, to attend to guests outside pool.

**Issue:** Whether there was negligence on part of appellant arising from a breach of duty of care it owed the deceased?

**Decision:** Supreme Court agreed with NCDRC findings and observed “The duty of care arises from the fact that unless the pool is properly maintained and supervised by trained personnel, it is likely to become a potential source of hazard and danger. Every guest who enters the pool may not have the same level of proficiency as a swimmer. The management of the hotel can reasonably foresee the consequence which may arise if the pool and its

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<sup>182</sup> MANU/SC/0418/2019.

facilities are not properly maintained. The observance of safety requires good physical facilities but in addition, human supervision over those who use the pool.” The court also observed that allowing or designating a life guard to perform the duties of a Bartender is a clear deviation from the duty of care. “Mixing drinks does not augur well in preserving the safety of swimmers. The Appellant could have reasonably foreseen that there could be potential harm caused by the absence of a dedicated lifeguard. The imposition of such a duty upon the Appellant can be considered to be just, fair and reasonable. The failure to satisfy this duty of care would amount to a deficiency of service on the part of the hotel management.” Thus, the appeal was dismissed.

Responsibility of hotel to vehicles in the parking lot

**Taj Mahal Hotel, New Delhi v. United India Insurance Company Limited, New Delhi and others<sup>183</sup>**

**Facts:** The second Complainant, the car owner insured his car with the first Complainant United India Insurance Company Limited. The car owner reached the first Opposite Party (OP1), Hotel Taj and parked his car at the porch. He gave the car keys to the concerned parking man, received a parking slip from him, went inside the restaurant for having dinner and returned after the meal. On asking for the keys of the vehicle, he was informed by the officer on duty at the parking lot that his vehicle was driven away by some unknown person. He immediately rushed to the security room of the Hotel and contacted the security officer, who reported to him about the theft of the vehicle. It was stated by the Hotel staff that despite efforts by the Hotel guard, the car sped away.

The Hotel lodged a complaint at the police station but the police had given a report stating that the car was untraceable. A surveyor was appointed by the Insurance Company who settled the claim for Rs. 2,80,000/- vide a cheque. The Hotel was requested to compensate for the loss, but they refused to do so.

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<sup>183</sup> 2018 SCC OnLine NCDRC 408.

Hence the car owner approached the State Commission calling upon the Hotel to pay compensation. The State Commission upheld the complaint and directed the OP1 to pay the compensation amount to the car owner. Aggrieved by this, the opposite parties filed an appeal before the National Commission.

**Issue:** Whether the hotel is responsible for the loss?

**Decision:** The Commission opined that the possession and control of the car had been passed on by the Complainant to the Hotel which constituted bailment. The duty of due care was violated by the Hotel and the ensuing liability could not be diminished by the disclaimer of liability on the parking tag. A mere retention of a parking receipt does not constitute notice on the terms written on the receipt. The Hotel has admitted that the Complainant had dinner at their Hotel and with such an effectual consideration the question of whether the car owner is a ‘consumer’ does not arise.

Keeping in mind that the insurance company had already paid the car owner, the National Commission modified the order of the State Commission and partly allowed it. The opposite party was ordered to pay Rs. 2,80,000/- with 9% interest p.a.

## INSURANCE SECTOR

As per official reports and statistics, the Indian insurance sector consists of 68 insurance companies, out of which 24 provide life insurance, 27 provide general insurance, 6 provide health insurance and the remaining 11 are re-insurers.<sup>184</sup> The gross premiums written in India amounted to Rs. 5.53 trillion out of which Rs. 4.58 trillion were generated through life insurance and Rs. 1.51 trillion were generated through other insurances.<sup>185</sup>

### CONSUMER ISSUES

Insurance is necessary for consumers as it provides them with protection from any unexpected financial loss as it provides them with the means to recover from such a loss. As a result, consumer grievances must be addressed<sup>186</sup>:

1. False/misleading information about the insurance plan and the policy.
2. Unfair terms of insurance.
3. Rejection of genuine claims without reason.
4. Delay in grant of compensation upon acceptance of claim.
5. Non-payment of entire amount of claim.
6. Charging of extra premium.
7. Wrongful cancellation of policy.

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<sup>184</sup> IRDAI, 'Annual Report 2017-18' [2018] 7 <[https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/english\\_hindi\\_annual%20report%202018%20webcopy.pdf](https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/english_hindi_annual%20report%202018%20webcopy.pdf)> accessed 14 July 2019.

<sup>185</sup> IBEF, 'Indian Insurance Industry Overview & Market Development Analysis' <<https://www.ibef.org/industry/insurance-sector-india.aspx>> accessed 14 July 2019.

<sup>186</sup> Prajyot Dutta and Harshit Singh Jadoun, 'Consumer Protection in Banking and Insurance: A Comparative Study of the Laws between India and the West' <[https://www.academia.edu/15099398/Consumer\\_Protection\\_in\\_Banking\\_and\\_Insurance\\_A\\_Comparative\\_Study\\_of\\_the\\_Laws\\_between\\_India\\_and\\_the\\_West](https://www.academia.edu/15099398/Consumer_Protection_in_Banking_and_Insurance_A_Comparative_Study_of_the_Laws_between_India_and_the_West)> accessed 14 July 2019.

## **IRDAI**

Following the recommendations of the Malhotra Committee Report in 1999<sup>187</sup>, the Insurance Regulatory and Development Authority of India was established by the Insurance and Regulatory Authority of India Act, 1999.<sup>188</sup> The purpose of the IRDAI is to act as a regulator of the insurance sector and protect the interests of policyholders.

For grievance redressal, the IRDA offers two channels:

1. The Insurance Ombudsman Scheme allows for out-of-court settlements for individual policyholders.<sup>189</sup> The appointment, jurisdiction and powers of the Insurance Ombudsman are given in the Insurance Ombudsman Rules, 2017.
2. The Integrated Grievance Management System allows consumers to submit their complaints to the IRDAI which enables it to monitor the working of the insurance companies.<sup>190</sup>

For the purpose of protecting the interests of the consumers, the IRDAI has passed many regulations, some of which have been discussed below<sup>191</sup>:

1. The IRDAI (Re-insurance) Regulations, 2018 lays down the process for re-insurance.<sup>192</sup>
2. The IRDAI (Insurance Brokers) Regulations, 2018 amended the existing regulations in order to supervise the functioning of the insurance broker.<sup>193</sup>

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187 IRDAI, 'History of insurance in India' <[https://www.irdai.gov.in/ADMINCMS/cms/NormalData\\_Layout.aspx?page=PageNo4&mid=2](https://www.irdai.gov.in/ADMINCMS/cms/NormalData_Layout.aspx?page=PageNo4&mid=2)> accessed 14 July 2019.

188 Insurance and Regulatory Authority of India Act 1999, s 3.

189 Consumer Education Website, 'Ombudsman' <<http://www.policyholder.gov.in/Ombudsman.aspx>> accessed 14 July 2019.

190 Consumer Education Website, 'Integrated Grievance Management System' <[http://www.policyholder.gov.in/Integrated\\_Grievance\\_Management.aspx](http://www.policyholder.gov.in/Integrated_Grievance_Management.aspx)> accessed 14 July 2019

191 (n 239) 87.

192 Insurance Regulatory and Development Authority of India (Re-insurance) Regulations, 2018.

193 Insurance Regulatory and Development Authority of India (Insurance Brokers) Regulations, 2018.

3. The IRDAI (Protection of Policyholders Interests) Regulations, 2017 expands the applicability of these regulations to micro-insurance agents, IMF, web aggregators and insurance repositories.<sup>194</sup>
4. The IRDAI (Appointed Actuary) Regulations, 2017 lays down the duties and obligations of appointed actuaries.<sup>195</sup>
5. The IRDAI (Outsourcing of activities by Indian Insurers) Regulations, 2017 lays down restrictions on the type of activities which can be outsourced by Indian insurers.<sup>196</sup>
6. The IRDAI (Insurance Web Aggregators) Regulations, 2017 deals with duties and obligations of insurance web aggregators.<sup>197</sup>
7. The IRDAI (Health Insurance) Regulations, 2016 amends the existing regulation in order to comprehensively deal with health insurance providers in India.<sup>198</sup>
8. The IRDAI (Issuance of e-Insurance Policies) Regulations, 2016 lays down the procedure for issuance of e-insurance policies by insurance providers.<sup>199</sup>

## CASES

### Acceptance of premium by agent

**Life Insurance Corporation of India v. Girshari Lal P. Kesarwani,**<sup>200</sup>

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194 Insurance Regulatory and Development Authority of India (Protection of Policyholders Interests) Regulations, 2017.

195 Insurance Regulatory and Development Authority of India (Appointed Actuary) Regulations, 2017.

196 Insurance Regulatory and Development Authority of India (Outsourcing of activities by Indian Insurers) Regulations, 2017.

197 Insurance Regulatory and Development Authority of India (Insurance Web Aggregators) Regulations, 2017.

198 Insurance Regulatory and Development Authority of India (Health Insurance) Regulations, 2016.

199 Insurance Regulatory and Development Authority of India (Issuance of e-Insurance Policies) Regulations, 2016.

200 I(2009) CPJ 228 (NC).

**Decession:** The Commission held that the agent has no authority to accept premium of behalf of the Life Insurance Corporation of India. It also held that premium deposited by the agent after the death of the insured would not entitle the claimant to the insured amount under the policy.

Accident caused by person with invalid license

**Puneet Phutela, S/o. Sh. Roshan Lal v. The Oriental Insurance Company Ltd.**<sup>201</sup>

**Facts:** The Complainant purchased a Truck which met with an accident, on 14.06.2004, during the subsistence of the insurance policy. The Surveyor assessed the loss of the Truck in the sum of Rs. 1,39,587/-, for repairs. The Oriental Insurance Co. Ltd., the OP, repudiated the claim of the Complainant, on the ground that the driving license of the driver was found to be invalid. The District Forum allowed the complaint and directed the OP, to pay a sum of Rs. 1,99,591/- as claimed by the Complainant along with interest @ 9% pa, from the date of lodging of the claim, till its payment. The State Commission, however, accepted the appeal filed by the insurance company and dismissed the complaint.

**Issue:** Whether he insurance companies liable to pay for the osseess offered by the truck in the accident irrespective of the invalid driving license?

**Decision:** The driving licence goes to show that he was not permitted to drive HTV and his license was not valid for truck. The affidavit of Surveyor, Rajeev Kumar Saxena, remains unrebutted on record and we have no reason to disbelieve the same. The order passed by the State Commission is well reasoned.

**United India Insurance Co. Ltd. v. Davinder Singh**<sup>202</sup>

**Facts:** There was an allegation of deficiency in service owing to non-payment of amount of damages covered by insurance policy by insurer. The ground of rejection of the payment was that the driver of offending vehicle possessed a forged licence.

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201 2014 SCC OnLine NCDRC 311.

202 AIR 2008 SC 329.

**Issue:** Whether the renewal of forged licence would not fasten any liability on insurer to indemnify owner?

**Decision:** The Supreme Court held that the renewal of forged licence would not fasten any liability on insurer to indemnify owner, and the non-payment did not amount to deficiency in service.

Assessment must start with amount described as “sum insured” on day, when contract was entered into

**Sumit Kumar Saha v. Reliance General Insurance Company Ltd.<sup>203</sup>**

**Facts:** On 27<sup>th</sup> March, 2007 Appellant purchased one Volvo Hydraulic Excavator for a sum of Rs. 49,75,000/- with VAT amounting to Rs. 1,99,000/-, total purchase value thus being Rs. 51,74,000/-. Immediately after purchase, said Hydraulic Excavator was insured with Respondent vide “Contractor, Plants & Machinery Insurance Policy”. Insurance policy thereafter stood renewed. For period 22<sup>nd</sup> July, 2009 to 21<sup>st</sup> July, 2010, sum insured was Rs. 46,56,600/- on payment of premium of Rs. 33,700/-. Said Hydraulic Excavator was hired and was to be used at a different location. Appellant duly intimated change of location. On 30<sup>th</sup> June, 2010 Hydraulic Excavator was badly damaged in a fire while it was at such changed location. An FIR was lodged with local police and Respondent was also immediately intimated about damage and was requested to survey damage and settle claim. On 7<sup>th</sup> July, 2010 a surveyor came to be appointed by Respondent to survey and assess loss and damage. Though survey was undertaken, claim of Appellant was not getting settled and as such reminders were sent by Appellant. Thereafter, on 13<sup>th</sup> April, 2011, Appellant was intimated that, loss was assessed by surveyor at Rs. 25,24,273/-. Appellant being aggrieved filed case before State Commission. Appellant submitted that, Excavator was a total loss and that, he was entitled to insured amount of Rs. 46,56,600/- along with interest @ 12% p.a. and compensation as claimed in complaint. During pendency of the matter, Appellant placed on record report of a surveyor appointed by him. Said surveyor had assessed loss on

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<sup>203</sup> MANU/SC/0099/2019.

two counts, namely “loss assessed on repairing basis” at Rs. 94,64,357.70/- and on “total loss basis” at Rs. 41,90,940.00/- State Commission allowed complaint observing that, salvage wreck was property of insurance company and it could not be forced upon owner of damaged machine. State Commission directed Respondent to pay a sum of Rs. 41,90,940/- with interest @ Rs. 8% p.a. from date of filing of claim. Respondent, being aggrieved filed First Appeal which was partly allowed by National Commission vide its judgment. National Commission held that, Insurance Company was responsible to indemnify loss on basis of replacement of damaged machine in same condition at which it was at day of accident. In present case, though IDV of Rs. 46,56,000/- was mentioned in policy and was agreed between parties, however, if new machine was available for Rs. 51,00,000/- then on that basis, same machine of 3.25 years age could be available on approximate price being arrived at by deducting depreciation for 3.25 years from current price of new machine. Surveyor had calculated depreciated price of new machine fit for replacement as Rs. 34,42,500/- after applying depreciation of 10% p.a. since purchase of machine on current price of new machine till date of accident. National Commission further observed that, salvage value to tune of Rs. 6,50,000/- which was realized by Respondent could not have been deducted from aforesaid sum of Rs. 34,42,500/- National Commission, thus directed Respondent to pay a sum of Rs. 34,17,500/- for settlement of insurance claim of Appellant. It was found that, since Respondent was willing to settle matter for Rs. 25,42,273/- Respondent would be liable to pay interest on differential amount of Rs. 8,93,227/- @ 8% p.a., Hence this present appeal.

**Issue:** What was amount or value that insured is entitled to?

**Decision:** Supreme Court while allowing the appeal held that As a result of fire, Excavator was a “total loss” and insured would be entitled to replacement cost of Excavator and The policy in question indicates that the “year of make” of the Excavator was “2007” while the policy was for the period 22.07.2009 to 21.07.2010. The parties were aware that the Excavator was purchased in the year 2007 for Rs. 51.74 lakhs. If the contract mentioned the sum insured to be Rs. 46,56,600/- the parties must be deemed to be

aware about the significance of that sum and the fact that it represented the value of the Excavator as on the date when the coverage was obtained. It also observed that where agreement on part of Insurance Company was brought about by fraud, coercion or misrepresentation or cases where principle of uberrima fide was attracted, parties were bound by stipulation of a particular figure as sum insured. Therefore, surveyor and Insurance Company were not justified in any way in questioning and disregarding amount of "sum insured". Further depreciation, if any, could always be computed keeping figure of "sum insured" in mind. Starting figure, therefore, in this case had to be figure which was stipulated as "sum insured". Since Excavator, after policy was taken out was used for eleven months, there must be some reasonable depreciation which ought to be deducted from "sum insured". Surveyor appointed by insured was right in deducting 10% and in arriving at figure of Rs. 41,90,940/-.. Assessment made by State Commission was correct and that made by National Commission was completely incorrect.

**Balwant Singh & Sons v. National Insurance Company Ltd. and Ors.<sup>204</sup>**

**Facts:** Appellant purchased the vehicle at an auction conducted by the Bank to whom the vehicle was hypothecated in pursuance of a Hire- Purchase agreement. Appellant paid full consideration for the sale which was conducted in an auction to the Bank. A certificate of possession was furnished to the Appellant by the Bank. The Bank intimated the insurer that it ceased to have a lien on the vehicle consequent to the auction sale. Proposal for insurance was submitted by the Appellant to the insurer. Premium in respect of the insurance cover was paid by the Appellant and Policy of insurance was issued by the insurer in the name of the third Respondent but clearly reflecting the name of the Appellant as well. The vehicle was stolen. The Appellant lodged a First Information Report. Police issued a certificate to the effect that the vehicle was untraced. On 19 October 2006, the Appellant lodged a claim for the loss of the vehicle with the first Respondent and enclosed the registration certificate, FIR and the certificate of the police stating that the vehicle was untraced. First Respondent rejected the claim on the ground that the ownership of the vehicle and the insurance policy stood

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<sup>204</sup> MANU/SC/1061/2019.

in the name of the third Respondent and on the ground that the bank had a financial interest. The first Respondent stated that the vehicle must have been insured by the Bank as well. The claim was also rejected on the ground that the Appellant did not have an insurable interest. The Appellant addressed a letter to the first Respondent. However, the claim was repudiated by the insurer on the ground that, the Appellant had no insurable interest since the registration certificate was not transferred to it. The rejection of the claim led to the filing of a consumer complaint before the District Forum at Jalandhar. The claim was dismissed. The order of the District Forum was upheld by the State Commission in appeal and, in revision, by the NCDRC. According to the Appellant, insurance premium was collected by the insurer from it but since the registration certificate was still to be transferred, the insurance policy continued to reflect the name of the third Respondent as the insured.

**Issue:** Whether Appellant had no insurable interest since registration certificate was not transferred to it?

**Decision:** The Supreme Court while allowing the appeal held that, (1) Section 50 provides that where the ownership of any motor vehicle registered under Chapter IV is transferred; certain formalities have to be fulfilled. The formalities require the transferor to report the transfer to the registering authority within whose jurisdiction the transfer has to be affected and to send a copy of the report to the transferee. The transferee also has to report the transfer to the registering authority within whose jurisdiction he resides or maintains a place of business where the vehicle is normally kept. The transferee has to forward the certificate of registration to the registering authority together with the prescribed fee and a copy of the report received from the transferor so that particulars of the transfer of ownership may be entered in the certificate of registration. (2) Chapter XI provides for the insurance of motor vehicles against third party risks. Section 146 prohibits the use of a motor vehicle in a public place unless there is in force in relation to its use, a policy of insurance complying with the requirements of the Chapter. Section 147 specifies the requirements of such a policy and the limits of liability. Section 149 imposes a duty on the insurer to satisfy

judgments and awards against persons insured against third party risks. (3) As a result of the above provision, where a person in whose favour the certificate of insurance has been issued in terms of the provisions of Chapter XI transfers the ownership of the vehicle to another person, the certificate of insurance and the policy described in the certificate are deemed to have been transferred in favour of the new owner to whom the motor vehicle is transferred, with effect from the date of its transfer. (4) The principle that emerges from the precedents of this Court is that, even though in law there would be a transfer of ownership of the vehicle, that by itself would not absolve the person in whose name the vehicle stands in the registration certificate, from liability to a third party. So long as the name of the registered owner continues in the certificate of registration in the records of the RTO, that person as an owner would continue to be liable to a third party under Chapter XI of the Motor Vehicles Act, 1986. (5) In the present case, not only was there an acceptance of premium but the issuance of a policy document. The insurer had knowledge of the transfer when the Bank informed it of the lifting of the lien. (6) In the present case, the Court is dealing with a situation where following the transfer of the vehicle; the insurer was specifically informed by the Bank which held a lien on the insurance policy, of the lifting of its lien following the termination of the agreement of hypothecation. Following this, a policy of insurance was issued by the insurer. Admittedly the payment of premium was made by the Appellant. The third Respondent did not set up any claim in respect of the loss of the vehicle since the vehicle had already been repossessed and sold by the bank on account of its default in the payment of dues. The insurer cannot repudiate the claim of the Appellant holding that its liability is to the third Respondent who has no subsisting interest in the ownership in the vehicle. The Appellant has undertaken to furnish an indemnity to the insurer against any claim at the behest of the third Respondent. (7) The transfer of the vehicle is not in dispute. (8) The insurer adopted a basis which was unsustainable to repudiate the insurance claim. The loss of the vehicle took place in close proximity to the date of auction purchase. Present Court allowed claim in the amount of Rs. 2,42,000/- on which the Appellant shall be entitled to interest at the rate of 9% per annum from the date on which the claim was lodged until payment.

**Kanwaljit Singh v. Respondent: National Insurance Company Ltd.<sup>205</sup>**

**Facts:** Appellant lodged a claim for against National Insurance Company Ltd. (“Insurance Company”), which repudiated the claim amount without assigning any reason. However, later considering that the said Master Jasnoor Singh had an individual medical claim policy in the year 2009-2010 for Rs. 55,000/- the Respondent-Insurance Company deposited a sum of Rs. 27,550/- in the account of the Appellant towards final payment of the claim. Since the remaining claim was not paid, the Appellant filed a complaint before the District Consumer Disputes Redressal Forum (“District Forum”) claiming an amount of Rs. 5,00,000/- which was the sum insured under the Family Mediclaim Policy for the relevant year 2014-2015. Before the District Forum, the Respondent-Insurance Company raised various preliminary objections but had mainly claimed that since the said Master Jasnoor Singh was having pre-existing disease, hence the claim was not payable under the terms of the Policy. The District Forum, however, held that since the sum insured under the individual Mediclaim Policy of Master Jasnoor Singh for the year 2010-2011 (four years prior to his hospitalisation) was Rs. 1,07,500/- the amount payable would be 50% of such sum insured for the year 2010-2011, which comes to Rs. 53,750/- and not 50% of the sum insured in the year 2009-2010, according to which Insurance Company had paid Rs. 27,550/-. Thus, District Forum directed that the balance amount of Rs. 26,200/- would be payable to the Appellant, along with Rs. 5,000/- towards harassment and mental agony, plus Rs. 2,000/- on account of litigation expenses, along with interest @ 9% p.a. Challenging the said order, the Appellant herein filed an appeal before the State Consumer Disputes Redressal Commission (“State Commission”), which allowed the appeal of the claimant in toto. Respondent-Insurance Company filed a Revision Petition before the National Consumer Disputes Redressal Commission (“National Commission”). By its order, the National Commission upheld the order of the District Forum.

**Issue:** Whether National Commission was right in holding that, Appellant would be entitled to 50% of sum insured under individual Mediclaim Policy of Master Jasnoor Singh for year 2010-2011?

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205 AIR 2019SC 3868.

**Decision:** Supreme Court while allowing the appeal held that as no pre-existing disease at the time policy was taken out, and there was regular renewal of policy thereafter the plea of pre-existing disease impermissible. Even otherwise, insurance company itself had allowed reduced claim amount after repudiation of claim. Thus, it impliedly made plea of pre-existing disease immaterial for insurance company. Repudiation and later reduction of claim amount being contrary to terms of policy, on facts held, unsustainable and claim amount enhanced as per terms of policy.

Benefit of doubt should be given to insured in case of doubt over admissibility of the insurance claim

**Mavji Kanjji Jungi and Ors. v. Oriental Insurance Company Ltd.<sup>206</sup>**

**Facts:** The Complainants are the owners of the vessel, “Dhananjay” insured with the Opposite Party-Oriental Insurance Company Limited (OP hereafter) since inception. This vessel, was hit by some unidentified object from the bottom which resulted in ingress of water causing it to finally sink. Immediate intimation to the authorities ensured that no lives were lost and also intimated to Opposite Party. Surveyor’s reported reason for sinking of the vessel was found to be “contact/impact with some unidentified under water floating object”. Finding it to be a case of total loss as also no violation of any terms and conditions of the insurance policy, claim was filed with the OP. It is the case of the Complainant that despite this being the case, the OP appointed another Surveyor. The second surveyor submitted in its report with the following findings: that the vessel was not maintained properly and that engine was being used by the vessel and, therefore, the reason for sinking of the vessel was “Continuous vibrations caused by engine over a period severely affected the hull joints and resulted in giving away the joints” the Opposite Party repudiated the claim on the basis of second surveyor report. The owner of the vessel (Complainant) approached NCDRC after the insurance claim was rejected by the insurance company, Oriental Insurance.

**Issues:** Whether there is deficiency in service by the insurance company by repudiating the insurance claim?

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206 MANU/CF/0534/2020.

**Decision:** The National Consumer Disputes Redressal Commission pronounced that in case of any unsurity concerning the admissibility of an insurance claim, the benefit of the doubt should be given to the insured observing that it is reasonable to say that nobody involved in the sailing of the vessel really knew as to what precisely was the cause of the accident... record reveals they preferred to simply state what they did know which was they did not know. This cannot be held against the Complainants.”

Claim of substantial damage

**Krishna Food and Baking Industry P. Ltd. v. New India Assurance Co. Ltd.**<sup>207</sup>

**Facts:** There was substantial damage caused due to terror attacks but the claim of the Complainants was rejected on the ground that substantial damage had not been caused to building, plant, machinery and electricity fittings.

**Issue:** Whether substantial damage can be claimed?

**Decision:** The Supreme Court held the Complainants were able to establish the claims and it was not a case wherein the Complainants did not undertake the activities which were required to be undertaken by them, but they could not operate the units and carry on business.

Claims for health insurance

**Life Insurance Corporation of India v. Gurvinder Kaur W/o Late Kawaljeet Singh**<sup>208</sup>

**Facts:** Complainant filed a complaint before District Forum against Petitioner (Insurance Co.) alleging deficiency in service. Complainant submitted that X (Complainant's husband) obtained policy of Rs. 1,00,000/- from Petitioner. X fell ill and some problem was detected in right kidney and he underwent treatment for the same, but later expired. Complainant submitted claim, which was repudiated by the Petitioner on flimsy grounds. Petitioner contended that policy issued in favour of deceased lapsed due to non-payment of half

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<sup>207</sup> AIR 2009 SC 1000.

<sup>208</sup> 2013 SCC OnLine NCDRC 561.

yearly premium due on 14- 6-2003 and it was again revived on 1-11-2003. Further contended that at the time of revival, diseased submitted personal statement of his health, which contained false statement in respect of his health. District Forum allowed said complaint and directed Petitioner to pay policy amount along with 9% p.a. interest and Rs. 5,000/- as compensation and Rs. 2,000/- as cost of litigation. Appeal filed by the Petitioner was dismissed by State Commission. Hence, instant revision petition.

**Issue:** Whether order of the District Forum as affirmed by the State Commission could be upheld?

**Decision:** The question before National Commission was that whether order of the District Forum as affirmed by the State Commission could be upheld. It was held that deceased had suppressed material facts regarding his previous treatment and operation and has furnished false answers regarding his health, operation, X-ray, etc. Petitioner had not committed any deficiency in repudiating claim and District Forum committed error in allowing complaint and State Commission further committed error in dismissing appeal - Revision allowed.

Compensation for accidental death

**Chhattisgarh State Power Holding Company Ltd. v. Bajaj Allianz General Insurance Company Ltd.<sup>209</sup>**

**Facts:** While upholding the order of a consumer forum directing an Insurance Company to pay compensation to the family of a deceased person who suffered a cardiac arrest during a fall from an electric pole of a construction site, NCDRC quashed the order of Chhattisgarh State Consumer Disputes Redressal Commission vide which the order of Forum was dismissed and allowed the revision against the same. The Court was hearing a revision petition filed by Petitioner, which obtained a Group Personal Accident Insurance Policy for the benefit of its employees from the Insurance Company, under which a sum of Rs. 4 lakhs was payable in case of accidental death of any employee of the Petitioner/Complainant. The deceased employee, who

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<sup>209</sup> II (2014) CPJ 112 (NC).

was doing some construction work on an electric pole he fell down from the said pole, after which he was declared dead by the medical authorities. The Petitioner company paid a sum of Rs. 4 lakhs to the legal representatives of the deceased and claimed that amount from the insurance company but its claim was repudiated on the ground that according to the post-mortem report, deceased died due to heart failure, as he had been suffering from diabetes and heart disease. In complaint, Consumer Forum directed the Insurance Company to pay the compensation but State Consumer Commission dismissed the said order.

**Issue:** Whether the deceased died due to heart failure or was it due to an accident?

**Decision:** The commission held that this is a case where death has occurred because of an accident, involving fall from an electric pole 36' in height and under the terms and conditions of the Insurance Policy, the Respondent is liable to pay compensation to the legal heirs of the deceased employee. Since in this case, the amount of ' 4 lakh has already been paid to the legal heirs of the deceased employee, the OP has to pay the said amount to the petitioner/complainant and also a compensation of Rs. 5,000/- for mental agony and Rs. 1,000/- as litigation cost as ordered by the District Forum.

#### Compensation for loss caused by fire

#### **New India Assurance Company v. Penta Care Ayurpharma<sup>210</sup>**

**Facts:** Complainant filed a complaint before District Forum against Petitioner (Insurance Co.) alleging deficiency in service. Complainant submitted that he was carrying on the activity of manufacturing ayurvedic medicines, had obtained an insurance policy from the Petitioner, known as the 'Fire and Special Peril Policy'. There was a fire on the premises of the Complainant and bulk of furnished products and extracts stored in the store room were completely burnt, resulting in loss to the tune of Rs. 2,55,335/-. Complainant informed the Petitioner about the incident. Petitioner maintained that the cause of the loss was a peril which was excluded under the terms and

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<sup>210</sup> 2013 SCC OnLine NCDRC 563.

conditions of the insurance policy, and hence they were not liable to pay the claim - District Forum allowed said complaint and directed the Petitioner to pay a sum of Rs. 2,55,335/- to the Complainant with interest at the rate of 12% p.a. from the date of repudiation, until actual payment. An appeal filed before the State Commission against this order was dismissed by the State Commission- Hence, instant revision petition.

**Issue:** Whether the insurance policy was issued for the purpose of indemnifying the insured in case of fire and special peril?

**Decision:** It was held that insurance Policy in question, was issued for the purpose of indemnifying the insured in case of fire and special peril. Hence, when the goods of the Complainant were burnt due to excess heat generated during pulverisation, it can be held as an accidental loss by fire. Hence, *prima facie*, such loss was covered under the policy which was issued for covering fire risk. No reason to disagree with the findings of the State Commission and the District Forum because it was an established fact that loss has been caused to the Complainant due to the burning of stocks in the go down. Revision dismissed.

#### Compensation for theft of vehicle

**National Insurance Company Ltd. v. N.K. Financers and Jai Singh,<sup>211</sup>**

**Facts:** The revisions petition has been preferred by the National Insurance Company Ltd. and the Complainant, under Section 21 of the Consumer Protection Act, 1986 assailing the common order by the State Consumer Redressal Commission, UP at Lucknow in Appeals. The impugned order the State Commission, modifying the order passed by the District Consumer Disputes Redressal Forum, Bulandshahar, has directed the Insurance Company to pay to the Complainant an amount of Rs. 3,90,675/- with interest @ 9% p.a. from 30.06.2003 i.e. after the expiry of three months from the date of surveyor's report. It has also been directed that if the said amount is not paid within the specified period, interest @ 15% p.a. shall be payable. The Complainant, a financier, advanced loan of Rs. 5,00,000/- to one Jai Singh

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<sup>211</sup> Revision Petition No. 1489/2008 (NCDRC).

for purchase of Ashok Leyland truck on hire-purchase basis. The truck was registered. The Complainant insured the truck with the insurance company declaring its value at Rs. 6,00,000/- it was a comprehensive policy covering the period from 9.3.2000 to 8.3.2001, a premium of Rs. 10,759/- was paid, on the intervening 3<sup>rd</sup> and 4<sup>th</sup> July 2000 night the vehicle was stolen, The police was informed. Information regarding theft was also given to the insurance company on 6.7.2000. Finally untraceable report in respect of the vehicle, filed by the police, was accepted by the Magistrate. The Complainant lodged its claim for compensation with the Insurance Company offered to pay to the Complainant a sum of Rs. 2,85,000/- though the loss assessed by the surveyor on the basis of the market value of the vehicle at the time of theft was Rs. 4,88,344/-. The said amount seems to have been accepted by the Complainant. Being dissatisfied with the amount of compensation received, seemingly under pressure, the Complainant filed a complaint before the District Forum under section 12 of the Act praying for compensation of Rs. 6,00,000/- with interest @ 12% p.a. The insurance company as well as the Complainant preferred appeals against the said order before the State commission. The complaint's grievance was that the interest had been awarded for a shorter period, the insurance company contested the quantum of compensation. Both the appeals, the State Commission has modified the order of the District Forum. The issues were basis for determination of the market value of the vehicle for assessment of loss and the period and rate of interest, payable on amount of compensation. The Commission held that it is no more res integra, in *Dharmendra Goel v. Orinetal Insurance Company Ltd.* (2008) 8 SCC 279, the Supreme Court has held that an insurance company, after having accepted the value of a particular vehicle at the time of issuing the insurance policy, could not disown that very value on pretext or the other when they are called upon to pay compensation. The Commission also held that the said authoritative pronouncement, the loss on account of theft of the vehicle declared at the time of renewing the policy and not the market value of the vehicle at the time of the theft. The rate of interest @15% directed to paid only in the event of Insurance Company not disbursing the amount of compensation awarded by the State Commission, The Commission also feel that it would be fair in the insurance company is directed to pay

simple interest @ 9% p.a. on the balance amount of compensation to be computed in terms of this order minus the amount of Rs. 2,85,000/- already paid from the date of payment of Rs. 2,85,000/- to the Complainant till the date of actual payment.

**Decision:** The Commission held that the revision petition was allowed the order was set aside and the insurance company was directed to re-assess the loss on the vehicle, adopting the base value at Rs. 6,00,000/- insisted of Rs. 4,88,344/-.

#### Compensation for vehicle insurance

#### **National Insurance Company Ltd. v. N.K. Financers and Jai Singh<sup>212</sup>**

**Facts:** The revisions petition has been preferred by the National Insurance Company Ltd. and the Complainant, under Section 21 of the Consumer Protection Act, 1986 assailing the common order by the State Consumer Redressal Commission, UP at Lucknow in Appeals. The impugned order the State Commission, modifying the order passed by the District Consumer Disputes Redressal Forum, Bulandshahar, has directed the Insurance Company to pay to the Complainant an amount of Rs. 3,90,675/- with interest @ 9% p.a. from 30.06.2003 i.e. after the expiry of three months from the date of surveyor's report. It has also been directed that if the said amount is not paid within the specified period, interest @ 15% p.a. shall be payable. The Complainant, a financier, advanced loan of Rs. 5,00,000/- to one Jai Singh for purchase of Ashok Leyland truck on hire-purchase basis. The truck was registered. The Complainant insured the truck with the insurance company declaring its value at Rs. 6,00,000/- it was a comprehensive policy covering the period from 9.3.2000 to 8.3.2001, a premium of Rs. 10,759/- was paid, on the intervening 3<sup>rd</sup> and 4<sup>th</sup> July 2000 night the vehicle was stolen, The police was informed. Information regarding theft was also given to the insurance company on 6.7.2000. Finally untraceable report in respect of the vehicle, filed by the police, was accepted by the Magistrate. The Complainant lodged its claim for compensation with the Insurance Company offered to pay to the Complainant a sum of Rs. 2,85,000/- though the loss assessed by

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212 2013 SCC OnLine NCDRC 979.

the surveyor on the basis of the market value of the vehicle at the time of theft was Rs. 4,88,344/- . The said amount seems to have been accepted by the Complainant. Being dissatisfied with the amount of compensation received, seemingly under pressure, the Complainant filed a complaint before the District Forum under section 12 of the Act praying for compensation of Rs. 6,00,000/- with interest @ 12% p.a. The insurance company as well as the Complainant preferred appeals against the said order before the State commission. The complaint's grievance was that the interest had been awarded for a shorter period, the insurance company contested the quantum of compensation. Both the appeals, the State Commission has modified the order of the District Forum. The issues where basis for determination of the market value of the vehicle for assessment of loss and the period and rate of interest, payable on amount of compensation. The Commission held that it is no more res integra, in *Dharmendra Goel v. Orinetal Insurance Company Ltd.* (2008) 8 SCC 279, the Supreme Court has held that an insurance company, after having accepted the value of a particular vehicle at the time of issuing the insurance policy, could not disown that very value on pretext or the other when they are called upon to pay compensation. The Commission also held that the said authoritative pronouncement, the loss on account of theft of the vehicle declared at the time of renewing the policy and not the market value of the vehicle at the time of the theft. The rate of interest @15% directed to paid only in the event of Insurance Company not disbursing the amount of compensation awarded by the State Commission, The Commission also feel that it would be fair in the insurance company is directed to pay simple interest @ 9% p.a. on the balance amount of compensation to be computed in terms of this order minus the amount of Rs. 2,85,000/- already paid from the date of payment of Rs. 2,85,000/- to the Complainant till the date of actual payment.

**Decision:** The Commission held that the revision petition was allowed the order was set aside and the insurance company was directed to re-assess the loss on the vehicle, adopting the base value at Rs. 6,00,000/- insisted of Rs. 4,88,344/-.

Concealment of facts by complainant

**Meena Devi widow of Sh. Barthi Ram v. The Director General/ Additional Director General APS<sup>213</sup>**

**Facts:** The Shishpal purchased a postal insurance from the respondents for Rs. 2,00,000/- . The insurance was to mature on 29.05.2024, unfortunately. Shishpal died on 19.04.2009. The Complainant being the mother and the nominee of the deceased submitted insurance claim. The Respondents/ Opposite Parties repudiated the claim on the ground of concealment of material information regarding medical condition and paid a sum of Rs. 23,750/- to the Petitioner. Challenging the repudiation of the insurance claim, the Petitioner filed consumer complaint in District Consumer Forum Fathegarh. District Forum held that the Complainant with cost of Rs.1000/- and direct the OP who are jointly and severally liable to release the remaining insured amount of the life assured to the tune of Rs. 1,76,250/- in favour of the Complainant along with interest @ 9% per annum from the date of repudiation i.e. 19.03.2010 till actual payment Being aggrieved of the order of the District Forum, Respondents/Opposite Parties preferred an appeal and the State Commission on consideration of material on record accepted the appeal, set aside the order of the District Forum and dismissed the complaint by observing thus: The contract of insurance is based on the doctrine of 'uberrima fides' i.e. utmost good faith. The life assured while obtaining the insurance policy is under obligation to disclose several material aspect with respect to his/her life. Reference be made to the judgment of the Supreme Court in the case of *P.C. Chacko & Anr. v. Chairman, LIC of India* (2008)1 SCC 321, and Judgment of the Commission in the matter of *Crown Consultants Pvt. Ltd v. Oriental Insurance Company Ltd.* III (2011) CPJ 439 (NC) The legal position of controversy which requires consideration in the revision petition is whether the Petitioner concealed material information about his health and obtained the insurance policy by misrepresentation. The Commission found that medical category of the assured Shishpal was downgraded with the diagnosis 'Acute Stress Reaction' (which was later on upgraded to Shape-1 on 27.06.2007). The Respondents has failed to produce

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213 2013 SCC OnLine NCDRC 1105.

any evidence on medical literature to show that ‘Acute Stress Reaction’ is a serious disease and it is also not clear what is meant by ‘Acute Stress Reaction’ further, it was noticed that information given in the letter it appears that the deceased was upgraded to medical category Shape-1 which means that Acute Stress Reaction is of temporary nature and not a serious life threatening disease. The commission viewed that the State Commission has committed a grave error in holding that deceased assured obtained the insurance policy by concealment of misrepresentation of material facts, thus the impugned order of the State Commission reversing the order of the District Forum cannot be sustained.

**Decision:** The Commission allowed the revision petition, set aside the impugned order and restore the order of the State Commission.

**Gulab Singh v. HDFC Standard Life Insurance Co. Ltd. & Anr.<sup>214</sup>**

**Facts:** The Uncle of the Petitioner (Late Shri Balbir Singh) obtained an insurance policy from the Respondent HDFC Standard Life Insurance Co. Ltd. on 10.8.2013 for a sum of Rs. 11.00 Lakhs. He died just after one month after purchasing the policy. The Complainant claim for the payment of benefit available under the insurance policy. The claim was however repudiated vide letter dated 16.9.2014 on the ground that “The proposal accepted on the personal information provided in the proposal and the policy was issued in August 10, 2013, in which the assured had declared his birth as August 01, 1965 i.e aged about 48 years and had produced the PAN card as proof. However, through the investigations we had established that the correct age of the assured is 68 years at the time of death and the date of birth declared by him was false hence the contract of insurance is void ab initio.” Being aggrieved by this the Petitioner file a consumer complaint before the District Forum. The District Forum dismissed the complaint; aggrieved by the decision of District Court the Complainant approached the State Commission by way of Appeal. The said appeal was also dismissed and he is before this commission by way of Revision Petition.

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<sup>214</sup> Revision Petition No. 3142/2018 (NCDRC).

**Issue:** Whether the concealment of the personal information is a ground to repudiate the insurance claim?

**Decision:** The NCDRC dismissed the complaint and held that the date of birth of the insured is a material fact which needs to be correctly shared with the insurer, since, while considering the proposal, the insurer has to consider *inter-alia* the age of the proposer in order to decide whether it should accept the proposal or not. Based upon the age of the proposer, the insurer may either reject the proposal, it may ask him to undergo medical examination or it may charge a higher premium considering the risk commensurate with his age. The contract of insurance being based upon utmost good faith, the insured must correctly share all material facts, including his age with the insurer. That having not been done in this case, the orders passed by the fora below does not call for any interference by this Commission in exercise of its revisional jurisdiction.

**Life Insurance Corporation of India v. Kulwant Kumari,<sup>215</sup>**

**Facts:** Kailash Chander got himself insured with the Life Insurance Corporation; the policy lapsed but was later revived. He died three years after the original date of the policy, but the claim was rejected on the ground that he was suffering from diabetes two years prior to the revival of the policy.

**Decision:** The National Commission held that the burden of proving concealment was on the insurance company and this had to be done within 2 years as per the terms of Section 45 of the Insurance Act. It also rejected the contention of the Life Insurance Corporation that the two years were to be counted from the date of revival of the policy.

Constitution Bench of the Supreme Court: Consumer Fora has No Power to Extend Time to File a Reply under the Consumer Protection Act, 1986.

**New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.<sup>216</sup>**

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215 2009 SCC OnLine NCDRC 64.

216 2020 SCC OnLine SC 287.

**Issue:** Whether Section 13(2)(a) of the Consumer Protection Act, which provides for the Respondent/Opposite party filing its response to the complaint within 30 days or such extended period, not exceeding 15 days, should be read as mandatory or directory; i.e., whether the District Forum has power to extend the time for filing the response beyond the period of 15 days, in addition to 30 days?

The second question which is referred is as to what would be the commencing point of limitation of 30 days stipulated under the aforesaid Section.

**Decision:** Court referring the view of *Dr. J.J. Merchant case* the Supreme Court held the answer to the first question is that the District Forum has no power to extend the time for filing the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged under Section 13 of the Consumer Protection Act and the same is considered as directory not mandatory; and the answer to the second question is that the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complaint by the Opposite Party, and not mere receipt of the notice of the complaint.

Consumer Commission cannot consider complaint or appeal on merits after finding that it is time barred

#### **Singal Udyog v. National Insurance Company<sup>217</sup>**

**Facts:** There was delay of 150 days in preferring the First Appeal which was not condoned by the order under appeal and consequently the First Appeal stood dismissed. However, the National Commission also observed that there was apparent lack of merits in the matter and thus dismissed the appeal.

**Issue:** Whether the delay Consumer Commissions can consider complaint or appeal on merits after finding that it is time barred?

**Decision:** The Supreme Court observed that a Consumer Commission after having come to conclusion that the complaint or appeal was barred by

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<sup>217</sup> 2019 SCC OnLine SC 1785.

limitation could not consider the merits of the matter. However, delay of 150 days was not so alarming that matter should have been rejected on ground of delay. Thus, subject to Appellants paying sum of Rs. 25,000/- by way of costs to Respondent, delay of 150 days in preferring First Appeal was condoned. Parties were directed to appear before the National commission.

Coverage of accidental injuries

**Mrs. Madhumita Bose wife of Mr. Sandit Boase v. The Manager Retail and other<sup>218</sup>**

**Facts:** The complaint mother Sucheta Bose had obtained an accident protection plan-HC policy form the Opposite Party/insurance company with the coverage upto Rs. 25.00 Lakhs for the period from 04.11.2011 to 03.01.2012 as per the allegations in the complaint the said Sucheta Bose met with an accident on 05.05.2011 and was admitted in Medical College and Hospital with injury at the back of her head FIR dated 06.05.2011 was lodged. She was shifted form the Medical College and hospital to Saviour Clinic and then to SVS Marwari Hospital for better treatment Opposite Parties was informed of the death of the insured. The necessary documents inspite of several e-mails between the Complainant and the advocates notice dated 03.04.2012 urging upon the Opposite Party to settle the intimated that the claim did not fall within the policy coverage because the death was not as a result of accidental injuries. By that time the Claims settlement Commissioner and Director, Public Vehicles Department, Kolkota had passed an order for payment of a sum of Rs. 25,000/- for the accidental death of Sucheta bose. The Complainant also approached the insurance ombudsman who vide his letter dated 11.06.2012 showed his inability to admit the complaint because the claim of Rs. 25 Lakhs was beyond the financial limit of the Insurance Ombudsman. Ultimately the Complainant knocked the door of the consumer forum by filing a consumer complaint before the state commission praying for direction to the opposite parties to make payment of Rs. 25 Lakhs along with interest @ 18% p.a. besides compensation of Rs. 10.00 Lakhs for harassment and mental agony and the litigation cost of Rs. 50,000/-

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218 2015 SCC OnLine NCDRC 4.

**Issue:** Whether the accidental injury was covered under the policy?

**Decision:** The Court held that Rs. 25 Lakhs has been provided on account of accidental death as also on account of permanent disablement. In the present case the claim of the Complainant was for accidental death. Before the claim could be admitted by the insurance company it was incumbent on the part of the Complainant to prove proof to establish that the death was accidental. As per the allegation which has not been disputed the insured person fell from the bus which obviously would constitute an accident but as rightly held by the State Commission, it could not be established that the cause of death of the insured was the injury caused by the accident. This aspect is required to be established by clear evident and the pleas taken by the Appellant to be effect that settlement Commissioner of the state government had sanctioned payment of Rs. 25,000/- on account of death of the insured by the accident cannot provide necessary proof to establish the fact that the death of the insured person could actually be attributed to the accident and the injury caused in that accident such there was a gap of 11 days between the accident and the death these circumstance we do not find any basis on which to dismiss the appeal and uphold the order passed by the state commission but with no order of costs.

Coverage of loss of consignment

**New India Assurance Co. Ltd. v. Hira Lal Ramesh Chand<sup>219</sup>**

**Facts:** There was a claim against insurer but there was no averment or evidence that consignments were lost or damaged or that the consignments were wrongly delivered within stipulated period of sixty days.

**Issue:** Whether the failure of the buyer to make payment and take delivery is loss of consignment which is covered by the insurance policy?

**Decision:** The Supreme Court held that the failure of the buyer to make payment and take delivery is not a loss of consignment which is covered by the insurance policy. The Complainant should make out a case of actual loss

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<sup>219</sup> AIR 2008 SC 2620.

of the consignment covered by the contract of insurance or non-delivery of the consignment, i.e. refusal to meet a demand for delivery. Further, the claim against the insurer was not lodged in writing; no document was produced which showed the lodging of any claim.

Coverage of theft

**Vijay Kumar v. Bajaj Allianz General Insurance Co. Ltd. & Ors.<sup>220</sup>**

**Facts:** The Complainant/Petitioner hypothecated his tractor with Opposite Party/ Respondent, this tractor was insured with OP. OP as responsible for getting it insured. The tractor met with an accident which was seized by Police and was given on superdari to Petitioner. The tractor along with trolley was stolen and FIR was lodged and intimation was also given to OPs. As claim was not settled, alleging deficiency on the part of OPS, Complainant filed complaint before District Forum had no jurisdiction and as there was non-joinder of necessary parties, complaint was not maintainable. It was further submitted that tractor was insured to cover risk of third party for agriculture purpose only and no premium was paid to recover risk of theft or own damage and tractor was not insured comprehensively and it was also submitted that there was no relationship of consumer of consumer and service provider between the parties and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Appeal was filed by the Petitioner was dismissed by the learned State Commission impugned order against which, this revision petition was filed.

**Issue:** Whether the tractor was insured under the package policy, third party coverage under the policy and theft?

**Decision:** The Commission held that this policy does not insure for theft purposes and learned state commission rightly affirmed this finding, as tractor was not insured comprehensively and theft of tractor was not under cover of insurance policy, Complainant was not entitled to any claim on account of theft of tractor, and learned counsel could not provide any document to prove that compensation for theft of the tractor under the Welfare Fund

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<sup>220</sup> 2014 SCC OnLine NCDRC 388.

Scheme was to be provided by Respondents and in such circumstances, Petitioner cannot get any compensation from respondents on the basis of Tractor Welfare Fund Scheme. Hence the ordered held revision petition filed by the petitioner is dismissed at admission stage no order as to costs.

Delay in filing of claims

**Om Prakash v. Reliance General Insurance and Ors.<sup>221</sup>**

**Facts:** Appellant Mr. Om Prakash had insured his truck with the Respondent Reliance General Insurance (OP). The theft of the truck took place on 23<sup>rd</sup> March 2010 at Bhiwari city of Alwar District Rajasthan. F.I.R Under Section 379 of Indian Penal Code was lodged on 24<sup>th</sup> March 2010. Then, the Appellant visited the office of the first Respondent but the office was found to be closed. Thereafter Appellant along with the truck driver went with the police officials for their assistance to search the vehicle.

The Appellant lodged the insurance claim on 31<sup>st</sup> March 2010 with the Respondent-company and provided the necessary documents which were demanded by the company. An Investigator, appointed by the Respondent-company verified the theft to be genuine and payment of Rs. 7.85 Lakh towards the claim was approved by the Corporate Claims Manager. Thereafter, the Appellant made several requests and demands to the Respondent-company, inter alia, seeking speedy processing and disposal of his insurance claim. Finally, the Appellant served a legal notice to the Respondent-company. However, the Respondent-company repudiated the insurance claim of the Appellant citing breach of Condition i.e. immediate information about the loss/theft of the vehicle (as there was delay of 8 days in informing the respondent about the incident of theft).

The Appellant filed complaint before the District Forum, seeking a direction to the Respondent-company for payment of claim amount with the interest along with compensation. The District Forum dismissed the complaint holding that there was no deficiency of service on the part of Respondents. The Appeals of the Complainant before the State and National Commissions

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<sup>221</sup> (2017) 9 SCC 724.

were also dismissed on the same ground. Hence the Appellant is before Hon'ble Supreme Court questioning the legality and correctness of the said order in the present appeal.

**Issue:** Whether there was deficiency in Service by insurance company?

**Decision:** The Hon'ble Supreme Court observed that a person who has lost his vehicle may not straightaway go to the insurance company to claim compensation and would first make efforts to trace the vehicle. Hon'ble Supreme Court Bench said "If the reason for delay in making a claim is satisfactorily explained, such a claim cannot be rejected on the ground of delay, it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the Investigator".

The Respondents were directed to pay a sum of Rs. 8,35,000/- which includes compensation of Rs. 50,000/- to the Appellant with interest @ 8% per annum from the date of filing of the claim petition till the date of payment.

#### Delay in payment of insurance

**Muttha Associates, Promoters and Builders, Pune v. United India Insurance Company Ltd.<sup>222</sup>**

**Facts:** The Complainant had taken a standard fire and peril policy from the Opposite Party. The policy was effective from 22.1.2010 to 21.1.2011 and the sum insured was Rs. 47 crore 5 lakhs only. On 29.7.2010, fire took place in the server room of the Complainant. The matter was reported to the insurance company and they appointed a third party to survey. The surveyor after the survey submitted final report to the insurance company on 3.5.2012 and assessed the loss suffered to the tune of Rs. 13,82,93,292/-. According to Complainant as per IRDA regulation 9 the insurance company was required to settle the claim or reject it within 30 days of the receipt of final survey report from surveyor. The insurance company however failed to settle the claim within the time period of 30 days nor the claim was rejected. The insurance company ultimately settled the claim of Rs. 13,82,93,292/- in

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<sup>222</sup> Consumer Case No. CC/333/2013 NCDRC.

two installments in Dec 2012. The first instalment of Rs. 5 crore was paid on 5.12.2012 and balance Rs. 8,82,38,963/- was paid on 24.12.2012 which was received by the Complainant. According to Complainant the delay in making the payment of insurance is violation of the provisions of IRDA and amounts to deficiency in service and therefore he prayed for the interest amount for the delay of 204 days plus travel charges.

**Issue:** Whether there was deficiency in services by the insurance company?

**Decision:** The Commission allowed the complaint and directed the insurance company to pay to the Complainant 9.5% interest on the settled insurance claim w.e.f 03.06.2012 till the respective dates of payments of instalments of Rs. 5 crore and Rs. 8,82,38,963/-.

Difference in premium charged

**Punj Lloyd Ltd. v. Corporate Risks India Pvt. Ltd<sup>223</sup>**

**Facts:** There was a difference in the premium charged by ICICI Lombard General Insurance Company Ltd. in place of Oriental Insurance Company; for this reason, the Complainant sought compensation from the insurance broker. The complaint was dismissed on the ground that it involved complicated questions of fact which could only be decided by a civil court.

**Issue:** Whether the complicated questions of facts lead the case to get dismissed?

**Decision:** On appeal, the Supreme Court held that the mere fact that the case involved complicated questions of fact could not be the reason for dismissing the complaint. It further held that the decision whether the case involved complicated questions of fact could be decided only after both sides had filed their pleadings and such a decision could not be made only on the basis of the complaint. The Supreme Court stated that the test was not whether the case involved complicated questions of fact and law, but whether the questions, despite being complicated, could be decided by summary inquiry.

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<sup>223</sup> (2009) 2 SCC 301.

Enhancement of compensation

**Syed Sadiq etc. v. Divisional Manager, United India Insurance Company<sup>224</sup>**

**Facts:** Appellant was working as vegetable vendor. Appellant required assistance with his mobility in bringing vegetables to market place. Appellants met with an accident and sustained grievous injuries due to rash and negligent driving of offending vehicle. The Tribunal awarded compensation. The High Court (HC) enhanced compensation. Hence, disability at 85% to determine loss of income. There was no reason for Tribunal and HC to ask for evidence of monthly income of appellant. Considering state of economy and rising prices in agricultural products, a vegetable vendor was reasonably capable of earning Rs. 6,500/- per month. Appellant was self-employed and was 24 years of age and hence, was entitled to 50% increment in future prospect of income based upon the principle laid down in *Santosh Devi v. National Insurance Company Ltd. And Others*, 2012 Indlaw SC 151 - However, HC was correct in applying multiplier of 18 relying upon decision of *Sarla Verma v. DTC*, 2009 Indlaw SC 488 - Considering that Appellant might have to change his artificial leg from time to time, an amount of Rs. 1,00,000/- was under the head of medical cost and incidental expenses to include future medical costs. Further, Appellant was entitled to litigation cost also. By relying upon principle laid down in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, 2011 Indlaw SC 746, interest at the rate of 9% per annum was allowed on modified compensation.

**Issue:** Whether enhancement made by High Court was just and proper?

**Decision:** Both Tribunal and High Court erred in holding Appellants in instant appeals liable for contributory negligence. Tribunal arrived at conclusion only on the basis of fact that accident took place in middle of road in the absence of any evidence to prove the same. Thus, contribution of appellants in the accident was not proved by Respondents by producing evidence and therefore, finding of Tribunal regarding contributory negligence, which was upheld by High Court, was set aside. Appeals allowed.

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<sup>224</sup> AIR 2014 SC 1052.

Failure to inform about rejection of insurance within reasonable time

**D. Srinivas v. SBI Life Insurance Company Limited and others.<sup>225</sup>**

**Facts:** The Complainant-Appellant D. Srinivas along with his wife, and son Mr. D. Venugopal, obtained a housing loan of Rs. 30,00,000/- for construction of their house. A sum of Rs. 78,150/- was debited from their loan account towards SBI Life Insurance Cover under Group Insurance Scheme for home loan borrowers, through master policy holder i.e. State Bank of Hyderabad, covering the life of Mr. D. Venugopal, who was one of the joint loanees. The proposal form was accompanied by good health declaration by the insured, D. Venugopal who expired due to a massive heart attack. Consequently, the said life insurance obtained in his name came into force, obligating the insurer, the Opposite Party 1 herein, to pay the outstanding amount in their loan account. The Appellant approached the insurer and the bank informing them about the demise of D. Venugopal and requested them to settle the insurance claim and to discharge the outstanding loan amount in their house loan account. Since the insurer did not accede to his request, the Appellant filed a consumer complaint before the State Commission. The insurer denied his liability contending that the proposal for the policy was not accepted as the insured did not present himself for medical examination in spite of repeated requests. The State Commission allowed the complaint. Aggrieved by the same, the Opposite Party filed an appeal before the National Commission. The National Commission dismissed the complaint. Aggrieved by this, the complainants appealed before the Supreme Court.

**Issue:** Whether the Insurance Company is bound to honour the insurance policy?

**Decision:** The Supreme Court opined that the rejection of the policy must be made in a reasonable time so as to be fair and in consonance with the good faith standards. In this case, the enormous delay to reject the policy was not excusable. Moreover, it was borne from the records that the premium was only re-paid after a delay of more than one year, five months. In the light

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<sup>225</sup> (2018) 3 SCC 653.

of this, the Supreme Court upheld the decision of the State Commission and set aside the decision of the National Commission, ordering the Opposite Party to honour its policy.

Failure to pay accidental benefit amount

**Lakshmi Rohit Ahuja v. SBI Life Insurance Company Limited, Maharashtra<sup>226</sup>.**

**Facts:** Late Shri Rohit Ahuja, husband of the Petitioner/Complainant obtained a cash credit card from the G E Countrywide Consumer Financial Services Ltd., Opposite Party No. 3 in the complaint. As per the scheme of the said card, in the event of the card holder dying before the payment of the arrears outstanding against him, the same were to be paid by the insurer and a further sum of Rs. 3,00,000/- was payable to his legal heirs. The deceased died in an accident on 24.4.2009. An amount of Rs. 16,821/- being outstanding against him, in the said card. The aforesaid amount was paid by the insurer but the accidental benefit amount of Rs. 3,00,000/- was not paid. Being aggrieved, the Complainant approached the concerned District Forum by way of a Complaint, impleading the insurer as well as the G E Countrywide Consumer Financial Services Ltd. as Opposite Parties.

**Issue:** Whether insurance company had committed any deficiency in repudiating claim on accident insurance policy?

**Decision:** The Commission, relying upon Medical Literature produced by Appellant, held that deceased was under intoxication as a result of consumption of alcohol found in his blood sample, making him ineligible to benefits of double accident policy. Purpose of prohibiting driving after consuming liquor beyond prescribed quantity is to ensure that driver does not commit an accident on account of effect of liquor. Purpose of insurer behind excluding cases of accident when insured is under influence of intoxicating liquor is to ensure that consumption of liquor does not lead or contribute to happening of accident in which insured dies or injured. Therefore, consumption of liquor beyond a safe limit must necessarily disqualify insured

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226 2016 SCC OnLine NCDRC 1794.

from getting benefits of insurance policy taken by him. Thus Commission was of opinion that, if a person is found to have consumed more than 103.14 mg of alcohol/100 ml of his blood, which is position in case before us, it would be reasonable to say that he was under influence of intoxicating liquor at time he died or got injured. In case insured was under influence of intoxicating liquor at time of the accident and policy does not require any nexus to be shown between case of accident and consumption of liquor. It can hardly be disputed that deceased having 120 mg of alcohol per 100 ml of his blood was clearly under influence of intoxicated liquor when accident, in which he died took place. Therefore, insurer was not liable to make any payment to Complainant in terms of policy applicable to cash card taken by her husband. Therefore, no ground for interfering with impugned order was made out. Revision petition was dismissed.

Interpretation of ‘direct cause’ in special peril policies

**United India Insurance Co. Ltd. v. Dipendu Ghosh**,<sup>227</sup>

**Decession:** The Complainant obtained a special-peril policy from the Opposite Party for his godown-cum-manufacturing unit, and lodged a claim with the insurer, which was rejected on the basis of a surveyor’s report which stated that the flood water did not enter the godown, but due to moisture on account of water logging. The National Commission rejected the contention of the Opposite Party that the loss was not directly caused by storm, cyclone, flood and inundation, by relying of the dictionary meaning of ‘direct cause’ and held that the loss was caused by inundation and so, would fall within policy.

Interpretation of “caused by external, violent and visible means” in life insurance

**United India Insurance Company v. Sudha Rani and others.**<sup>228</sup>

**Facts:** The legal representatives of deceased Late Shri Ramji Lal are Complainants in the instant case against the OP United India Insurance

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227 II (2009) CPJ 311 (NC).

228 Revision Petition No. 2453/2011 (NCDRC).

Company. Deceased was holder of HDFC Bank Credit card with the facility having Life Insurance Policy issued by United India Insurance Co. (OP 1). It was an Accident claim-cum Accidental death policy valid for the period from 10.12.2003 to 9.12.2004 for total sum assured of Rs. 5 Lakhs. Shri Ramji died on 22 December 2003, due to Haemorrhagic shock by the fire arm missile injury. FIR was lodged and claim was made before OP1 on 22.1.2004. The OP1 repudiated the claim on the ground that, policy covers for death by accident on air/rail/road and not otherwise, whereas the deceased was shot by some miscreant, consequently upon which he died.

Hence, against the repudiation, the complaint was filed before District Consumer Dispute Redressal Forum, New Delhi. On the basis of pleadings and evidence, the District Forum allowed the complaint and directed OP to pay Rs. 5 Lakhs towards insurance amount and Rs. 1 lakh towards compensation for mental agony and Rs. 10,000/- towards cost of litigation. Aggrieved by the order of District Forum, OP No. 1/Insurance Company filed appeal before Delhi State Consumer Dispute Redressal Commission. The Hon'ble State Commission partly allowed the appeal and modified the order of District Forum. The OP1 was directed to pay insured amount of Rs. 5 Lakhs to the Complainants with cost of Rs. 10,000/- within 6 weeks. Hon'ble State Commission observed that there was no justification in awarding damages for hardship and mental agony in the instant case. Being aggrieved, this revision petition has been filed by OP No. 1 before National Commission and he has prayed to set aside the order of State Commission.

**Issue:** Whether the murder is an accident, is it covered under insurance policy?

**Decision:** The Hon'ble National Commission said that If we read the terms like “ caused by external, violent and visible means” as an exclusion clause, which means the company shall not be liable for death arising out of accident, other than air/rail/road travel but it is surprising to note that the said exclusion clause refers to other eventualities, which are anyway not concerned with air/rail/road accidentally, namely, viz. suicide, sexually transmitted disease, pregnancy and child birth etc. It clearly shows the happenings which are not covered under the policy, have been specified in the exclusion clause. It

nowhere excludes murder. Therefore, the repudiation done by the insurance company is unjustified hence the order passed by the State Commission was upheld and The OP1 was directed to pay insured amount of Rs. 5 Lakhs to the Complainants.

Lift given to passengers

**Manjeet Singh v. National Insurance Company Ltd. and Ors.<sup>229</sup>**

**Facts:** Appellant Manjeet Singh purchased a Tata open truck under a Hire Purchase agreement dated 13.10.2003 for a sum of Rs. 8,57,000/-. The vehicle was hypothecated in favour of Respondent No. 2 Finance Company. It was insured for a value of Rs. 7,28,000/- for the period of 25.09.2004 to 24.09.2005 from the Respondent-1 National Insurance Company. On 12.12.2004, when the vehicle was being driven by the driver of Complainant on the National Highway some persons requested the driver through hand signal to give them lift. Since it was a cold wintery night, the driver gave lift to these persons. After a little while, one of the passengers requested the driver to stop the truck saying he had to answer the call of nature. When the truck was stopped, the three passengers assaulted the driver, tied his hands and legs with a rope and threw him in a nearby field and fled away with the vehicle.

A FIR was lodged in Police Station on 13.12.2004 and the finance company (R-2) was intimated about the theft. The Complainant had also given a letter of authority to the finance company to negotiate and settle the claim with the insurance company. However, no settlement was arrived at and the claim was repudiated on the ground of breach of terms of the policy.

The owner-Complainant filed a consumer complaint before District Consumer Disputes Redressal Forum (District Forum) against Insurance Company for compensation of loss caused due to repudiation of insurance claim. The main defence taken by the Insurance Company was that the driver of the vehicle, by giving a lift to the passengers, had violated the terms of the policy and it was breach of policy hence insurance company was not liable.

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<sup>229</sup> (2018) 2 SCC 108.

The District Forum rejected the claim of the Complainant, the appeal filed by him before the State Commission and National Commission were also rejected. Hence the revision petition was filed before Supreme Court.

**Issue:** Whether there was a fundamental breach of the policy?

**Decision:** Hon'ble Supreme Court observed that the violation of the condition should be such a fundamental breach so that the claimant cannot claim any amount whatsoever. To avoid its liability the insurance company must show that the breach of the policy is so fundamental in nature that it brings the contract to an end. The court said that the owner was not at fault, driver giving a lift to some passengers may be a breach of the policy, but it cannot be said to be such a fundamental breach. Giving lift on a cold wintery night was a humanitarian gesture, it cannot be said to be such a breach that it nullifies the policy and the driver could not have foreseen the theft. Orders of the Forum, State Commission and National Commission were set aside and the Respondent No. 1-insurance company was directed to pay 75% of the insured amount of Rs. 7,28,000/- along with interest at the rate of 9% per annum from the date of filing the claim petition till the deposit of the amount. Compensation of Rs. 1,00,000/- was awarded.

Loss occurring to stocks held in trust

**Mahendrakumar & Bros. v. National Insurance Co. Ltd.<sup>230</sup>**

**Facts:** The Complainant took a Fire Floater Policy from the Opposite Party for the stock/material stored in their godown since 1992 and they got the policy renewed from time to time. On 11.10.2013 a fire occurred in the insured cold storage of the Complainant due to which the goods of its customers worth Rs. 5,62,745/- were totally burnt and destroyed during the policy period from 2013 to 2014. The description of risk is mentioned as on stock of chili & or kirana items of ed. stored & or lying in various (7) cold storages for a total of Rs. 30,00,000/-. The incident was reported to the police and also to the insurance company. The insurance company repudiated

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<sup>230</sup> 2015 SCC OnLine NCDRC 3804.

the claim on the ground that loss occurred to the stocks held in trust and hence were not covered by the insurance policy. Aggrieved by the repudiation, the Petitioner filed a complaint before the District Consumer Disputes Redressal Forum, Ahmedabad seeking relief of Rs. 5,62,745/- with interest at 12% p.a. with Rs. 50,000/- as compensation and Rs. 25,000/- as penalty and Rs. 40,000/- as cost. The District Forum dismissed the complaint. On appeal, the State Commission dismissed the appeal and upheld the decision of the District Forum. Thus, the review petition was filed.

**Issue:** Whether compensation for loss of stocks held in trust can be claimed from the insurance company which was not covered by the insurance policy?

**Decision:** The Counsel for the Petitioner states that goods in trust were not covered due to the mistake on the part of the insurance company. However, he has not given any evidence to prove the same. He could not also explain why the Petitioner did not point out the mistake and let it rectified. Thus, the National Commission dismissed the review petition. The decision of the State Commission was affirmed.

**Motor Vehicle Claim: Assured must have caused the bodily injury by external/outward, violent and visible means and should have direct or proximate cause.**

**Alka Shukla v. Life Insurance Corporation of India<sup>231</sup>**

**Facts:** The spouse of the Appellant obtained three insurance policies from the Respondent. The spouse of the Appellant, while riding his motorcycle, experienced pain in the chest and shoulder, suffered a heart attack and fell from the motorcycle. Spouse of Appellant had died by time that he had been admitted to hospital. The insurance claim was settled in respect of the basic cover of insurance. However, the insurer repudiated the claim under the accident benefit component of the insurance policy on the ground that the death of the insured had occurred due to a heart attack and not due to an accident. The Appellant filed a consumer complaint before the District Forum. The District Forum allowed the complaint and directed the Respondent to

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<sup>231</sup> MANU/SC/0596/2019.

pay the accident benefit under the three policies together with interest. The State Commissioner affirmed order of District Forum. In a revision by the insurer, the National Commissioner reversed the judgment of the District Forum, and set aside award of compensation in terms of the accident benefit. Hence this present appeal.

**Issue:** Whether Appellant entitled for accident benefit claim?

**Decision:** Supreme Court while dismissing the appeal held that in order for the Complainant to prove her claim, she must show direct and positive proof that the accident of the assured falling from his motorcycle caused bodily injury by external/outward, violent and visible means. The Complainant would have to prove that the accident and the injuries sustained as a result were a direct or proximate cause of her husband's death and that assured died as a result of a heart attack which was not attributable to the accident.

Nature of insurance

**Vikram Green Tech (I) Ltd. v. New India Assurance Company Ltd.**<sup>232</sup>

**Facts:** The Complainant's poly-houses were damaged in a storm, and the surveyor gave a report clarifying that the comprehensive floriculture policy covered all the poly-houses; however, the insurer declined the claim and the Complainant filed a complaint, which was dismissed by the National Commission on the ground that the policy clearly mentioned the number of poly-houses as six.

**Decision:** The Supreme Court upheld the order of the Commission holding that insurance was a commercial transaction and an insurance contract was to be construed, like any other contract, on its own terms. The insured cannot claim anything beyond what is covered by the policy. Although the proposal form may be essential in construing the terms of the policy, the surveyors report is not.

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<sup>232</sup> (2009) 5 SCC 599.

Negligence of Complainant

**Mahender Goel v. National Insurance Co. Ltd.**<sup>233</sup>

**Facts:** The Complainant who is the proprietor of a firm M.R. Jewellers, engaged in export of jewellery, had taken cash in transit policy to cover any single cash in transit upto Rs. 10 lakhs from National Insurance Co. It was alleged by the Complainant that one day when the Complainant was carrying a cash bag of Rs. 9,85,000/-, on the rear seat of the car, two young boys on a motorcycle indicated the Complainant that the rear left side tyre of his car was punctured. Therefore, Complainant stopped the car on the side of the road and got down and took out stepany from the dickey of the car and changed the rear left side tyre within 10 to 12 minutes. When Complainant entered the car after change of wheel, he found cash bag missing from the car.

**Issue:** Insurance Company had committed any deficiency in repudiating claim of cash in transit policy.

**Decision:** The insurance claim of the Complainant in the matter was repudiated by the company. Before State Commission, insurance company stated that it had repudiated the claim on the ground of breach of policy's terms and conditions as Complainant's conduct was not in conformity as provided in condition no. 3 & 6 of the insurance policy at the time of alleged incident and Complainant had failed to take reasonable steps and care to ensure safety of the cash being carried in transit, and had not locked the main lock of driver side door and the locks of the other doors as well, while changing the tyre. State Commission dismissed the complaint against which Complainant filed appeal before NCDRC. National Commission, after perusal of documents and hearing both the parties, observed that, "Condition no. 3 of the policy provides that insured was required to take all reasonable steps to safeguard the property insured against accident, loss or damage. Perusal of surveyor's report indicates that Complainant left driver side unlocked on account of which all other three doors of the car also remained unlocked and it appears that culprits after taking advantage of door being unlocked, had taken away the bag with cash. When Complainant himself was negligent

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<sup>233</sup> 2015 SCC OnLine NCDRC 2612.

in taking reasonable care to safeguard his bag by keeping door of car unlocked, Opposite Party had not committed any deficiency in repudiating claim and learned State Commission had not committed any error in dismissing the complaint. While holding that the Complainant had violated the conditions of the policy, NCDRC dismissed the appeal and upheld the order of State Commission as well as the repudiation of the claim by the insurance company.

Non-disclosure as an unfair trade practice

**Max New York Life Insurance Co. Ltd. v. Insurance Ombudsman and others<sup>234</sup>**

**Facts:** Appellant is an insurance company. Insured approached the Insurance Ombudsman stating that he had taken an insurance policy for which the premium was fixed at '4,810 which was collected for the first three years. In the 4<sup>th</sup> year insurer demanded 10.3% of the premium amount as service tax. Insured contended that he was made to believe that he needs to pay only '4,810 as the premium and no further payment need be made. Ombudsman held that the premium of '4,810 is inclusive of the service tax component and that insured need not pay any amount in addition to the premium. Insurer challenged the order in Writ Petition.

**Decision:** Court held that this would amount to the unfair trade practice under sec. 2(r)(1)(ix) of the CPA. It further stated that Offering insurance policy without disclosing that insured will have to pay tax in addition to the insurance premium, amounts to unfair trade practice. If the tax component is not revealed to the insured at the time of issuing the policy, Insurer cannot claim such tax from the insured during term of the policy.

Non-settlement of claim

**Bhagu Ram v. National Insurance Company Ltd.<sup>235</sup>**

**Facts:** The Complainant has got his turbo truck vehicle with registration insured from the Opposite Party company. The period of insurance was from

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<sup>234</sup> 2011 SCC OnLine Ker 3771.

<sup>235</sup> 2016 SCC OnLine NCDRC 2064.

06.07.2011 to 05.07.2012. According to the Complainant, the turbo truck met with an accident and the Petitioner had to incur an expenditure of Rs. 13,50,819/- for its repair. A claim was filed but the Opposite Party has not settled the claim. The Opposite Party has stated in their reply that the surveyor had assessed the damage at Rs. 7,57,059/- in its survey report. As there was no valid and effective fitness of the said vehicle of the Complainant and due to violation of the policy conditions, the amount was not payable. The District Consumer Disputes Redressal Forum, Nagaur directed that the Complainant is entitled to get Rs. 7,57,059/- from the Opposite Party and the Opposite Party shall also pay interest @ 9% per annum from the date of filing of the claim petition till recovery. Along with this the Opposite Party shall pay Rs. 5000/- for litigation expenses and shall also pay Rs. 5000/- for mental agony to the Complainant. Aggrieved by the order of the District Forum, the Opposite Party filed an appeal before the State Commission. The State Commission set aside the order of the District Forum and dismissed the complaint.

**Issue:** Whether an insurance company is liable to pay compensation to the owner of the vehicle who was driving a vehicle without a fitness certificate?

**Decision:** The National Commission observed that as there was no fitness certificate of the vehicle on the date of the accident, driving the vehicle without a fitness certificate was a breach of the terms and conditions of the insurance policy and hence, he is not liable to be compensated under the said policy. Thus, the revision petition was dismissed and the order of the State Commission was upheld.

Person in Whose Name Vehicle Stands Registered on the Date of Accident to be treated as 'Owner'

**Surendra Kumar Bhilawé v. The New India Assurance Company Limited<sup>236</sup>**

**Facts:** The case arises out of an insurance claim made by one Surendra Kumar Bhilawé. The Insurance company repudiated the claim on the ground

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236 2020 SCC OnLine SC 523.

that Bhilawe had already sold the said truck to the said Mohammad Iliyas Ansari (about three years ago). Bhilawe filed consumer complaint which was allowed by the District Forum. The appeal filed by the Insurance Company was dismissed by the State Commission. Setting aside both these orders, the National Consumer Commission on the ground that when an owner of a vehicle sells his vehicle and executes a sale letter without in any manner postponing passing of the title to the property in the vehicle, the ownership in the vehicle passes to the purchaser on execution of the sale letter.

**Issue:** Whether the ownership in the vehicle passes to the purchaser on execution of the sale letter without passing the title of the property?

**Decision:** The Supreme Court allowed the appeal observing the definition of ‘Owner’ under Section 2(30) of the Motor Vehicle Act, 1988 i.e. “a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement” held that Bhilawe remained the owner of the truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.

#### Repudiation of claim

**New India Assurance Co. Ltd. v. Luxra Enterprises Pvt. Ltd. and Ors.<sup>237</sup>**

**Facts:** Complainant is an Industrial Unit engaged in manufacture of garments. The Complainant obtained a policy of insurance for the risk of fire for the relevant period with the assured sum of Rs. 85,00,000/-. It was on 12.07.2000, the factory of the Complainant was engulfed in fire. It is thereafter, the Complainant lodged a claim for loss due to fire incident in its factory. The grievance of the Complainant is that, the Insurance Company has appointed one surveyor after another. The first surveyor-M/s. Sunil J. Vora & Associates

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<sup>237</sup> 2019 SCC OnLine SC 634;

has accepted the damage preferred by the Complainant to the extent of Rs. 54,93,865/- whereas, the second surveyor- M/s. ABM Engineers & Consultants reduced the amount to Rs. 24,76,585/- and the third surveyor- R.G. Verma repudiated the total claim under Clause 8 of the Insurance Policy on the ground that there were enough valid circumstantial reasons on the part of the Insured to manipulate the fire. The Insurance Company on the basis of the report submitted R.G. Verma repudiated the total claim of the Complainant. Aggrieved by the same the Complainant approached National Commission. National Commission wherein, a sum of Rs. 54,93,865/- has been awarded as compensation for loss suffered on account of damage by fire to the Complainant, subject to the condition that the said amount will be paid within 45 days by the Insurance Company. The Complainant preferred for appeal challenging that the Commission has not granted interest on the amount found due and payable to the Complainant.

**Issue:** Whether the Insurance Company has reasons or there were inherent defects in the survey report or that such report is arbitrary, excessive and exaggerated, before another Surveyor could be appointed?

**Decision:** Supreme Court upheld the right of the Insurance Company to appoint Surveyor but such right can be exercised for valid reasons or if the report is found to be arbitrary and that Insurance Company must give cogent reasons without which it is not free to appoint the second Surveyor. In fact the Supreme Court in this case observed that the appointment of the Surveyors was to repudiate the claim of the Complainant on one pretext or the other and it did not find any illegality in the order passed by the Commission and modified the order that Complainant shall be entitled to the interest on the amount of Rs. 54,93,865/- at the rate of 6% per annum from the date of filing of petition till the payment of the amount.

**Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd;**<sup>238</sup>

**Facts:** The Appellant purchased a standard fire and special perils policy from the Respondent National Insurance Company Ltd. thereby insuring the risk

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238 AIR 2020 SC 548.

of loss/damage to the stock of coal and lignite stored in its factory compound. An additional premium of Rs. 59,200/- was paid by the Appellant company so as to cover the risk of loss of the aforesaid stock on account of spontaneous combustion. The Appellant was declared a Sick Unit and was accordingly registered under SICA. The factory remained closed from 17.02.2006 to 09.08.2006 and was re-opened on 10.08.2006.

After re-opening it was noticed between the periods from 11.8.2006 to 20.8.2006 that some amount of stock of coal and lignite has been diminished/ destroyed on account of spontaneous combustion, causing loss and damage. Intimation in this regard was sent to the Respondent-insurer on 12.09.2006. Pursuant to the claim made, a surveyor was appointed who visited the premises of the Appellant on 18.09.2006 and sought certain details, which were provided on 28.11.2006. After carrying out the requisite survey, the surveyor submitted his report on 11.04.2007 assessing total loss to the tune of Rs. 63,43,679/-. The claim lodged by the appellant was however repudiated by the Respondent-insurer vide communication dated 27.07.2007 on the ground that since spontaneous combustion did not result into fire thus, loss had not been spontaneous combustion of the insurance policy. The Appellant was further informed through the letter that unless spontaneous combustion results into fire, there is no liability under the policy. On denial of the claim the Appellant approached the National Consumer Disputes Redressal Commission. The NCDRC rejected the claim holding that since the complainant had contravened Clause 6(i) of the General Conditions of Policy, no claim is payable.

**Issue:** Whether the Respondent-insurer had waived the condition relating to delay in intimation and lodging of the claim, by appointing a surveyor & Whether in the absence of any mention, of aspect of delay in intimation and violation of conditions of Clause 6(i) of General Conditions of Policy, in the repudiation letter, the same could be taken as defence before the NCDRC?

**Decision:** The Supreme Court has observed that an insurance company cannot raise delay as a ground for repudiation for the first time before the consumer forum, if it has not taken delay in intimation as a specific ground in letter of repudiation. Relying on *Galada Power and Telecommunication Ltd. v.*

*United India Insurance Company Ltd*, it was contended that since the letter of repudiation does not even remotely refer to delayed intimation or delayed claim, as postulated in Clause 6(i), the said ground cannot be taken as a defence to the claim. Hence we are of the considered opinion that the law as laid down in ‘Galada’ still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC”.

**Compaq International and another v. Bajaj Allianz General Insurance Company Limited and another.<sup>239</sup>**

**Facts:** Mr. Balwant Singh was driving a motorcycle with Mr. Suresh Kumar as a pillion rider when it met with an accident with the offending vehicle, owned by Compaq International (Complainant) which was being driven by Mr. Nirmal Singh, insured with Bajaj Allianz General Insurance Company Limited (OP). Both the driver and the pillion of the motorcycle suffered injuries. Two claim petitions were filed. The two separate claim petitions were tried together and certain amounts were awarded to both the injured. Since contributory negligence was found to be 50 per cent, the amount determined was reduced by 50 per cent to award the aforesaid amounts. All the respondents which included the owner, driver and the Insurance Company were made jointly and severally liable.

Controversy arose when as per information obtained from the Licence Clerk from the Registering Authority, the license was not valid on the date of the accident. The Insurance Company, thus sought to absolve itself of the liability. The Punjab & Haryana High Court ordered that the Insurance Company could recover the amount from the owner and the driver. Aggrieved by the order, the owner and the driver have filed this appeal.

A complaint was filed under Section 12 of the Consumer Protection Act, 1986 by Compaq International, owner of the vehicle against the insurance

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<sup>239</sup> (2018) 6 SCC 342.

company, Bajaj Allianz General Insurance Company Limited and the Licensing Authority. Negligence is attributed to the services rendered by the Respondents as the accident claim had not been paid. The registering authority was also roped in as a party on account of the stand sought to be taken that the driving licence was valid till 2003 while the accident happened on 12.11.2005. However, the validity period as per the driving licence was 29.04.2011.

Post-trial this complaint was allowed and a sum of Rs. 55,887/- was awarded to Compaq International along with interest and costs. The insurance company preferred an appeal before the State Consumer Dispute Redressal Commission, which was allowed on the basis of a finding that the driver had not applied for renewal of driving licence within a period of 30 days from the date of expiry and, thus, did not hold a valid driving licence on the relevant date.

The Appellant aggrieved by this order preferred a revision petition before the National Consumer Disputes Redressal Commission, which agreed with the findings of the State Commission and, in fact, went further to even observe that the licence was apparently a forged one. Hence, this Special Leave Petition was filed.

**Issue:** Whether there is Deficiency in Service by Insurance Company?

**Decision:** The Court observed that the driving license was issued on 27.02.1998 which recorded the date of birth as 30.04.1961 and the validity date given in the driving license was 29.04.2011. Section 14(2)(b) of the Motor Vehicles Act states that a licence which is originally issued or issued on renewal would be effective for a period of 20 years or until the person obtaining such licence attains the age of 50 years, whichever is earlier. The driving license was issued on 27.02.1998. Since the date of birth of the driver, Nirmal Singh was recorded in the license itself as 30.04.1961, he would have attained the age of 50 years on 30.04.2011. Thus, the license issued was valid up to 29.04.2011. In terms of the Motor Vehicles Act, once a person attains the age of 50 years, the license is renewed for a period of five years from the date of such issue or renewal. The renewed license issued to the Petitioner is valid for a period of five years from 2011 to 2016 for the

“LMV-NT-Car Only” category of vehicles. This licence was subsequently converted into a license both for LMV and Transport vehicle, a copy of which license was also produced. The validity of this license is from 2016 to 2018.

The Supreme Court was of the view that the lower Court clearly fell into an error in doubting that the licence was valid on the date of the accident. Thus, the appeal was allowed. The orders of both the State Commission and the National Commission were set aside and the Civil Appeal No. 2540 of 2018 was remitted to the State Commission to be decided in accordance with law in view of the Court’s judgment in Civil Appeal Nos.2538-2539 of 2018.

**Pawan Kumari Wd/o Late Kishan Babu v. Life Insurance Corporation of India, Through Branch Manager, Mahowa and another<sup>240</sup>**

**Facts:** Kishanbabu Shivhare was murdered on 21.3.1995 in a property dispute with some persons in his area. The Petitioner filed claim under the three policies to the LIC for getting the sum insured, along with accidental benefit and bonus. On the failure of the LIC to pay the claim, the consumer complaint was filed before the State Commission. During the proceedings before the State Commission, the LIC filed their written statement stating that they had already approved death claim along with bonus payable under the said policies and the same had been offered several times for payment to the Complainant, but she avoided receiving the same. The LIC took the stand that the claimant was not entitled to the ‘accident benefit’ under the policies because it was a “death due to murder” and not a case of ‘accidental death’. The State Commission observed in the impugned order that the sum insured including bonus, amounting to Rs. 11,26,332/- had already been released to the Petitioner by the Insurance Co. on 16.11.2000. The State Commission ordered that simple interest should be paid on the said amount @ 9% p.a. for the period 28.11.1998 to the date of payment. The State Commission also held that the Petitioner was not liable for accidental claim separately as compensation. Being aggrieved with this order, the Petitioner

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<sup>240</sup> 2016 SCC OnLine NCDRC 1533.

was before National Commission by way of the present two appeals. During hearing, the learned counsel for the Appellant argued that the Appellant was entitled to get the benefit of accidental claim as well, because under the terms and conditions of the policy, “murder” came under the definition of accident.

**Issue:** Whether there is deficiency in repudiating claim in Life Insurance Policy?

**Decision:** The two appeals were allowed and a direction was given to the LIC to provide accident benefit under the three policies to the Appellant in addition to the grant of other benefits allowed by the State Commission. The State Commission vide impugned order had granted simple interest @ 9% per annum on the payment made already to the Appellant w.e.f. 28.11.1998, i.e., the date on which the complaint was filed. The interest on the amount of accident claim shall also be paid @ 9% per annum w.e.f. 28.11.1998 till realisation. There shall be no order as to costs. Both the Appeals were allowed.

**Jaiswal Cold Storage and Ice Factory, Gorakhpur, Uttar Pradesh v. The New India Assurance Co. Ltd., Uttar Pradesh<sup>241</sup>**

**Facts:** The Complainant, through its Proprietor, Sh. Iitendra Kumar Iaiswal, Gorakhpur, Uttar Pradesh, is running a Cold Storage Plant, where potatoes were being stored. The Complainant obtained an insurance policy from New India Assurance Co. Ltd., OP, for storing of potatoes in its plant, effective from 15.04.1996 to 14.11.1996, i.e., for a period of seven months and the total sum assured was Rs. 56,25,000/- . The Complainant also got his machinery insured with the said OP for the period 15.04.1996 to 14.04.1997. On 30.08.1996, the Complainant informed the OP that one compressor had broken down on 27.08.1996 the Complainant informed the OP that there was damage to the stocks, i.e., potatoes, about 13,398.70 quintals, valuing at Rs. 40,20,000/- due to breakdown of the compressor of the plant, erratic power supply by the UPSEB and failure of the generating set. M/s. Inder

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<sup>241</sup> 2014 SCC OnLine NCDRC 335.

Chadha 8: Associates, appointed as Surveyor, for assessing the loss stated in its final report that there was no cause, whatsoever, arising under the insurance policy and therefore, the claims submitted by the Complainant for a sum of Rs. 40,20,000/- was ultimately repudiated by the insurance company, on 30.09.1997.

**Issue:** Whether the claim of the Complainant was wrongly repudiated by the insurance company?

**Decision:** The Commission held that the terms of the policy have to be construed as it is and we cannot add or subtract something. Policy contract is between the parties and both parties are bound by terms of contract. It may be mentioned here that FOES insurance cover does not include load shedding or rationing of supply by Authorities or even erratic power supply. Deterioration of any part of any machine caused by or naturally resulting from normal use or exposure, or loss due to willful neglect or gross negligence of the insured or his representatives is excluded as the term accident in the contract had been defined as any sudden and unforeseen loss or damage to the plant or machinery. The above said incident occurred due to negligence, inaction and passivity on the part of the Complainant itself and therefore, it cannot pass the buck on the other side. The complaint is, therefore, dismissed. No order as to costs.

**Bonda Kasi Annapurna v. The Branch Manager, Bajaj Allianz General Ins. Co. Ltd. & Ors.<sup>242</sup>**

**Facts:** The Complainant's husband B. V. V. Nageswara Rao had taken policy of Rs. 25,00,000/- (Personal Guard - Individual Personal Accident Policy) for a period of 3 years from 8.12.2006 to 7.12.2009 from OP/ Respondent No. 1. On 3.1.2008, Complainant's husband slipped from stairs and sustained fatal injuries. The OP was intimated and a claim lodged, but it was repudiated. The Complainant filed a complaint with State Commission alleging deficiency on the part of OP. The OP resisted the complaint and submitted that there was no post-mortem report and no intimation to Police. The State Commission after hearing both the parties dismissed the complaint against which, this

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<sup>242</sup> 2014 SCC OnLine NCDRC 13.

appeal has been filed along with application for condemnation of 1163 days delay.

**Issue:** Whether a repudiation of the claim of the Complainant amounted to deficiency on the part of OP?

**Decision:** The Commission held that no reasonable explanation has been given for condemnation of inordinate delay of 1163 days and therefore, merely because the Complainant was from a rural background, inordinate delay of more than 1100 days cannot be condoned. Until and unless this inordinate delay is condoned, merits of the case couldn't be considered. Thus, since there is no reasonable explanation at all for condemnation of inordinate delay of 1163 days, application for condonation of delay is dismissed. As application for condonation of delay has been dismissed, appeal being barred by limitation is also liable to be dismissed.

#### Theft of medicine

**IND Swift Limited v. New India Assurance Company Limited and others<sup>243</sup>**

**Facts:** The Appellant Company was engaged in the manufacture of pharmaceuticals and for this purpose it had stored raw materials in the shape of medicines in its godown which was earlier situated at a different place and subsequently shifted to another location. Intimation about the same was given to Respondent Insurance Company from whom the Appellant had taken an insurance policy for Rs. 1 Crore. During the validity of the policy, a theft took place in the godown of Appellant. A Surveyor was appointed, to whom all the necessary documents and details were supplied, including the untraced report from the Police. The Respondent informed the Appellant that the claim could not be indemnified since the raw materials stolen from the business premises of the Appellant were not covered under the insurance policy. Aggrieved, the Appellant filed a complaint before the State Commission on grounds of deficiency in service, which was dismissed. Hence the present appeal was filed.

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<sup>243</sup> 2012 SCC OnLine NCDRC 633.

**Issue:** Whether the State Commission was justified in rejecting the claim of Appellant?

**Decision:** The question before the National Commission was whether the State Commission was justified in rejecting the claim of Appellant. It was held that, as per the wordings of the insurance policy, only those medicines, which were tablets, vials, ointments, syrups, injections and packing materials were insured. The Appellants interpretation that the stroke marked after each word should be construed as or and not read in continuation was not acceptable since the word such as had been used to make the intention of the insurance policy clear. It was opined that an insurance policy was to be construed strictly as per the terms and conditions of the policy document, which was a binding contract between the parties and nothing could be added or subtracted by giving a different meaning to the words mentioned therein. In the instant case, there was adequate evidence on record including the Appellants own declaration vide letter that the goods stolen were raw materials which were stocked in its godown as also in its register of closing stock of raw materials submitted to the Bank, and they were not covered in the insurance policy taken by the Appellant. Therefore the appeal was dismissed.

Unfair and deceptive act and amounts to unfair trade practice.

**ICICI Prudential Life Insurance Co. Ltd. v. Dattatreya Bhivsan Gujar<sup>244</sup>**

**Facts:** Gujarat has taken an insurance policy named ICICI-Pru Hospital Care in 2008. He had no illness from 2008 to August 2012. On September 18, 2012, he was admitted in Bombay Hospital due to abdominal pain and was diagnosed with renal (kidney) ailments. He underwent dialysis, and subsequently a kidney transplant. He approached the insurance company for reimbursement of hospitalisation expenses. The Insurance Company repudiated on the ground of “non-disclosure of pre-existing medical condition relying principally on a certificate issued by one Dr. Rajendra G Chandorkar which stated that Gujarat was a known patient of diabetes and hypertension

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<sup>244</sup> MANU/CF/0386/2019.

for the last 10 years. Gujar filed a consumer complaint before the district forum for compensation. District forum passed an order in his favour. The insurance company's petition challenging the lower forum's order was rejected by Maharashtra State Commission, after which ICICI Prudential moved the NCDRC for review of the order.

**Issue:** Whether medical certificate obtained and used by insurance company is suspicious? If suspicious whether it amounts to unfair trade practice?

**Decision:** NCDRC held that ICICI Prudential had obtained and used a "suspicious medical certificate" for denying the claim. "It is an unfair and deceptive act and amounts to unfair trade practice", the commission said and directed the company to pay Dattatreya Bhivsan Gujar 75 per cent of his claimed amount, that is Rs 4,15,030/- along with Rs 1 lakh for mental, financial and physical hardship and the amount be paid within four weeks from June 14.

**Shriram General Insurance Co. Ltd. through Constituted Authority v. Babulal Meena<sup>245</sup>**

**Facts:** Complainant's vehicle was insured with the OP for the period 20.07.2010 to 19.07.2011. On 18.06.2011, the vehicle met with an accident. Thereafter, the surveyor appointed by the Complainant assessed the loss at Rs. 1,22,681/- . The OP refused to register the claim of the Complainant on the ground that the Complainant had already filed two claims for accident on 5.01.2011 and 21.04.2011. So, as per policy conditions, the third claim could not be registered. Being aggrieved by the act of the OP, the Complainant filed a complaint before the District Forum. The District Forum, allowed the complaint and directed the OP to pay the amount of Rs. 1,16,681/- as assessed by surveyor in his report to the Complainant with interest @ 10 % p.a from the date of complaint till payment. The OP preferred an appeal before the State Commission. The State Commission dismissed the appeal and upheld the order of the District Forum. After which revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 against the order passed by the State Consumer Disputes Redressal Commission, Rajasthan.

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<sup>245</sup> 2020 SCC OnLine NCDRC 84.

**Issue:** Whether the insurance company liable to pay the insurance claim to the Complainant?

**Decision:** Court held that the subject insurance policy was valid from 20.07.2010 to 19.07.2011. The Petitioner insurance company settled two accident claims on the insured vehicle, in respect of accidents reported to have occurred on 05.01.2011 and 21.04.2011. It thereafter cancelled the OD (own-damage) portion of the insurance policy with effect from 08.06.2011 by giving a 7-day notice vide letter dated 01.06.2011. The amount of premium for the OD portion for the residual unexpired period of the policy was refunded by a cheque dated 10.06.2011. The cancellation and refund was in accordance with an explicit and unequivocal condition contained in the insurance policy. Thereafter the insurance company did not entertain a third accident claim, in respect of an accident reported to have occurred on 18.06.2011 i.e. after the said cancellation had come into force (08.06.2011) and after the said refund had been made (10.06.2011). As such, no ‘deficiency in service’ is made out against the petitioner insurance company. Hence, based on the foregoing discussion, the insured cannot claim the assured amount thrice. This is against the policy conditions. The OP rightly refused to entertain the claim of the Complainant.

Whether an apprentice is an ‘employee’ in a contract of insurance

**New India Assurance Company Limited v. Abhilash Jewellery.<sup>246</sup>**

**Facts:** The Respondent, who was the Complainant, had taken a jeweller’s block policy. He lodged a claim with opposite party insurer for loss of gold ornaments. The insurer repudiated the claim on the ground that the loss occurred when the gold was in the custody of an apprentice, who was not an employee (because policy stipulated that for indemnification of the loss, the property insured has to be “in the custody of the insured, his partner or his employee”). The National Commission allowed the complaint holding that an apprentice was an ‘employee’ since Section 2(6) of the Kerala Shops and Commercial Establishments Act (as well as some other statutes) defined an ‘employee’ to include an ‘apprentice’.

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246 (2009) 2 SCC 661.

**Issue:** Whether or not the apprentice was fell under the definition of “employee”?

**Decision:** The Supreme Court, however, held that the word ‘employee’ in the contract of insurance had to be given the meaning in common parlance. The definition in the local Act, including an ‘apprentice’ in the category of ‘employee’, was only a ‘legal fiction’, which is a concept in law and could not be applied to an insurance contract. The Court, therefore, allowed the appeal.

## MEDICAL SECTOR

Following the ruling of the Supreme Court in the landmark judgement of *Indian Medical Association v. V.P. Shantha & Ors.*<sup>247</sup>, services rendered by medical practitioners were brought under the ambit of Section 2(1)(o) of the Consumer Protection Act, 1986 i.e. medical treatment was to be considered to be a service and accordingly, medical practitioners could be liable for deficiency of service.

Accordingly, the tort of negligence was taken to be the basis for deficiency of service by a medical practitioner, and termed as ‘medical negligence’. Essentially, any medical practitioner who breaches their duty of professional care by act/omission and causes damage as a result of such act/omission is said to be negligent.<sup>248</sup> With the change in the doctor-patient relationship and implementation of new medical techniques and devices, the Bolitho test was adopted for determining if medical negligence had been committed. As held in *Bolitho v. City and Hackney Health Authority*<sup>249</sup>, the factors which have to be assessed are:

1. Whether the medical practitioner acted as per a practice accepted by a competent medical practitioner.
2. If no, if the deviation from the norm can be justified as being reasonable.

It must be noted that the liability of the medical practitioner is three-fold: liability under the Consumer Protection Act, 1986 for payment of damages; civil liability for tort of negligence where the provisions of the Consumer

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247 AIR 1996 SC 550.

248 Pankaj Kukreja et al, ‘Consumer Protection Act and Medical Negligence – A Brief Insight’ [2011] 17(2) JIAPH 522 <[https://www.researchgate.net/publication/313839535\\_Consumer\\_Protection\\_Act\\_and\\_Medical\\_Negligence-A\\_Brief\\_Insight](https://www.researchgate.net/publication/313839535_Consumer_Protection_Act_and_Medical_Negligence-A_Brief_Insight)> accessed 14 July 2019.

249 [1996] 4 All ER 771.

Protection Act, 1986 do not apply; or criminal proceedings under the Indian Penal Code, 1860.

## **CONSUMER ISSUES**

As per official reports and statistics, India has a population of 133.92 crores<sup>250</sup> and only 10.4 lakh registered allopathic doctors.<sup>251</sup> This ratio of 1 doctor for 1278 patients is a far cry from 1 doctor for 1000 patients as recommended by the WHO.<sup>252</sup> With nearly 65% of the health expenditure being out-of-pocket expenditure and nearly 63 million Indians moving below the poverty line due to health expenditure every year<sup>253</sup>, it is clear that the medical sector suffers from a lack of manpower and health insurance policies.

The sensitive nature of the medical procedures and the devastating consequences which can follow from medical negligence make it important that consumer grievances with the medical sector are addressed:

1. Lack of consent of the patient in the medical procedure due to misleading claims or lack of communication.<sup>254</sup>
2. Extremely high costs of healthcare due to defensive medicine being practiced<sup>255</sup>, less coverage by health insurance and high cost of drugs.
3. Lack of medical equipment and trained medical personnel in hospitals.<sup>256</sup>

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250 Worldometers, 'India Population' <<https://www.worldometers.info/world-population/india-population/>> accessed 14 July 2019.

251 Central Bureau of Health Intelligence, 'National Health Profile 2018' p 15.

252 WHO, 'Density of medical doctors (per 10,000 population)' <[https://www.who.int/gho/health\\_workforce/physicians\\_density/en/](https://www.who.int/gho/health_workforce/physicians_density/en/)> accessed 14 July 2019.

253 Jordan Levinson, '63 million Indians are pushed into poverty by health expenses every year – and drugs are the chief cause' (*The Centre For Disease Dynamics, Economics & Policy*, 4. June 2016) <[https://cddep.org/blog/posts/63\\_million\\_indians\\_are\\_pushed\\_poverty\\_health\\_expenses\\_each\\_yearand\\_drugs\\_are\\_chief\\_cause/](https://cddep.org/blog/posts/63_million_indians_are_pushed_poverty_health_expenses_each_yearand_drugs_are_chief_cause/)> accessed 14 July 2019.

254 Neeraj Nagpal, 'Incidents of violence against doctors in India: Can these be prevented?' [2017] 30(2) National Medical Journal of India 97, 98.

255 M Sonal Sekhar and N Vyas, 'Defensive Medicine: A Bane to Healthcare' [2013] 3(2) Ann Med Health Sci Res. 295.

256 K Ratha and P Lakshmi, 'A study on problems faced by patients in private hospitals' [2018] 3(8) IJARND 129, 135.

## MEDICAL COUNCIL OF INDIA

In 1956, the Medical Council of India was reconstituted by the Indian Medical Council Act, 1956.<sup>257</sup> The purpose of the MCI is to establish and maintain high standards of qualification in medicine in India and abroad.<sup>258</sup>

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 lays down the code of medical ethics and code of conduct which must be adhered to by every registered medical practitioner in India.<sup>259</sup>

## CASES

### Conflict between rigid hospital protocols and medical ethics

#### **Yashumati Devi v. Christian Medical College, Vellore<sup>260</sup>**

**Facts:** The Appellant's husband, a 58 year old man, had a history of pain in his left arm and in 2009, he visited the hospital's outpatient department complaining of pain in his left arm on exertion. On diagnosis, it was revealed that he had a Coronary Artery Disease (CAD). The patient was administered doses of Herapin without any monitoring protocol. Even when the patient complained of bleeding and disorientation, the authorities ignored the requests of the patient. The patient later suffered a stroke and there was immediate need of a CT scan. The hospital denied CT scan for over three hours citing unpaid dues despite the fact that Rs. 1.5 lakh were already deposited.

**Issue:** Whether this was a case of medical negligence and was the wife of the patient entitled to compensation?

**Decision:** The NCDRC granted a compensation of Rs. 25 lakh to the Appellant stating that a hospital has every right to insist on payment but it also has the prime duty to take care of a patient facing a health emergency. The Court noted that there was an urgent need for the patient's brain CT

257 Indian Medical Council Act 1956.

258 Medical Council of India, 'Introduction' <<https://www.mciindia.org/CMS/about-mci/introduction>> accessed 14 July 2019.

259 Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002.

260 2020 SCC OnLine NCDRC 211.

scan but it was delayed for more than three hours as the hospital waited for a fresh receipt of Rs. 1850/- towards charges for the procedure. Thus, a deficiency/negligence was clearly established.

SC awards Rs. 10 Lakh compensation in a medical negligence case to ‘send message’ to medical practitioners

**Shoda Devi v. DDU/Ripon Hospital Shimla,**<sup>261</sup>

**Facts:** The Shoda Devi (Appellant), who had been suffering with abdomen pain and menstrual problems, approached Deen Dayal Upadhyay Hospital (Respondent No.1)- a government hospital at Shimla ('DDU Hospital') where she was examined and was diagnosed with having fibroid and endometrial hyperplasia. The Appellant was advised to undergo a minor operation viz., Fractional Curettage (D&C). For the purpose of the operation aforesaid a para-medico, administered intravenous injection of Phenergan and Fortwin directly by a syringe in the right arm of the Appellant. She continuously suffered excruciating pain during the entire surgical procedure and despite bringing the fact to the knowledge of doctors of DDU Hospital and a para medico during and after the procedure, no measures were taken to redress and reduce the discomfort suffered by her. Due to the complication the arm of the Appellant, which could not be handled by the team of doctors at DDU Hospital, she was shifted to Indira Gandhi Medical College and Hospital, Shimla ('IGMCH') in a taxi arranged by her husband. In IGMCH, she was administered Brachial Plexus Block treatment immediately and, on being examined, she was diagnosed with "acute arterial occlusion with ischemia of limb, caused by intra-arterial injection", which ultimately resulted in amputating her right arm above the elbow. Having thus suffered the loss of limb, the Appellant filed a consumer complaint seeking compensation before State Commission. The State Commission examined the matter on merits; and, with reference to the evidence of the doctors as also that of the Appellant, held that no case of medical negligence was proved and further directed the DDU Hospital to make ex gratia payment to the tune of Rs. 2,93,526/-. Aggrieved by the decision of the State Commission the

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261 2019 SCC OnLine SC 334.

Appellant preferred an appeal before the national Commission. The National Commission allowed the appeal and enhance the compensation only to the tune of Rs. 2,00,000/-. The Appellant has approached the Supreme Court to special leave against the judgement and order of NCDRC seeking enhancement of the amount of compensation with reference to the disablement and loss suffered by her due to the negligence of the respondents, which led to the amputation of her right arm above the elbow.

**Decision:** Supreme Court awarded further amount of Rs. 10,00,000/- towards compensation over and above the amount awarded by State and National Comission and directed the Respondent to pay within 3 months failing of which the enhanced amount of compensation shall carry interest of 6% p.a. and further held that such granting of reasonability higher amount of compensation was necessary to serve dual purposes is to provide some succour and support to the Appellant against the hardship and disadvantage due to amputation of right arm; and to send the message to the professionals that their responsiveness and diligence has to be equi-balanced for all their consumers and all the human beings deserve to be treated with equal respect and sensitivity.

**Arun Kumar Mangli v. Chirayu Health and Medicare Private Ltd.,<sup>262</sup>**

**Facts:** The spouse of the Appellant, Madhu Manglik, she was diagnosed with dengue fever when she was about 56 years of age. The patient was admitted to Intensive care unit to Chirayu Health & Medicare hospital at Bhopal. Though she was afebrile, she reported accompanying signs of dengue fever including headache, body ache and a general sense of restlessness. The patient had a prior medical history which included catheter ablation and paroxysmal supra ventricular tachycardia suggestive of cardiac complications. Since the patient was complaining of abdominal discomfort, an ultrasonography of the abdomen was carried out. On the date of admission the patient was sinking, her blood pressure was non-recordable, extremities were cold and the pulse was non-palpable. In the meantime, the patient was placed on a regime of administering intravenous fluids. Since the blood

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262 MANU/SC/0202/2019.

pressure of the patient did not improve, she was administered inotropes (dopamine & non adrenaline). Her cardiac levels were monitored and examined and later the patient had a cardiac arrest & was declared dead. The Appellant instituted a complaint before the SCDRC seeking an award of compensation in the amount of Rs. 48 lakhs on the ground that his spouse suffered an untimely death due to the medical negligence of the treating doctors at the hospital. SCDRC came to the conclusion that a case of medical negligence was established and an amount of Rs. 6 lakhs was awarded to the Appellant by way of compensation, together with interest at the rate of 9 per cent per annum. In appeal, these findings were reversed by the NCDRC and in consequence, the claim stood dismissed. Matter then went to Supreme Court.

**Issue:** Whether a charge of medical negligence exists from the fact that there was failure of the hospital to regularly monitor the blood parameters of the patient during the course of the day?

**Decision:** The Supreme Court relying on its landmark judgement in *Kusum Sharma v. Batra Hospital and Medical Research Centre*, according to which the ‘duty of care which is required of a doctor is one involving a reasonable degree of skill and knowledge and held that the doctors had failed to provide medical treatment in accordance with medical guidelines, and thus failed to satisfy the standard of reasonable care as laid down in the Bolam case and adopted by Indian Courts. The bench, however, absolved the Director of the Hospital from liability. It said: “There is no basis for recording a finding of medical negligence against the Director of the hospital. The Director of the hospital was not the treating doctor or the referring doctor.” As regards compensation, the bench said that contribution made by a non-working spouse to the welfare of the family has an economic equivalent. Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the Court must bear in mind that the contribution is significant and capable of being measured in monetary terms and held that claimant will be entitled to receive an amount of Rs. 15 lakhs by way of compensation.

Doctor is vicariously liable for the acts of his team which assists him in every sphere in rendering treatment to the Patient

**Mohan Dai Oswal Cancer Treatment & Research Foundation & Ors. v. Prashant Sareen & Ors<sup>263</sup>**

**Facts:** The case was regarding the death of a three year old child named Arshiyai in 2004, while she was undergoing treatment for cancer at Mohan Dai Oval Cancer Treatment and Research Foundation Hospital, Ludhiana, under the supervision of one Dr . Raman Arora. A medicine used for treatment called ‘Vincristine’ had to be administered intravenously. However, this medicine was given intrathecally (through back bone injection) by Doctor Harjith Singh Kohli, with assistance of Doctor Vandana Bhambri, who was assisting Dr. Arora. After the injection, the situation of the patient worsened. Within two weeks, Arshiyai breathed her last. Her parents Prashant Sareen and Anjal Sareen filed complaint before the Chandigarh State Consumer Commission in 2005, claiming compensations for medical negligence. The Commission found that the death of Arshiyai was due to the wrong method of administering the drug, and awarded a compensation of Rs. 16,80,749/- to her parents. Challenging this award, appeal was filed in the NCDRC by the doctors and the hospital contending that the child was suffering at advanced stage of cancer and would have died anyway. Therefore, they denied any role of alleged lapses in the treatment in causing her death.

**Issue:** Whether the Doctor is vicariously liable for the acts of his team which assists him in every sphere in rendering the treatment to a patient?

**Decision:** The National Commission relying on the decision rendered by Hon'ble Supreme Court in *Achutrao Haribhan Khodwa v. State of Maharashtra & Ors.*, 1996 (2) SCC 634 that a doctor is vicariously liable for the negligence committed by members of his team which was assisting in the treatment and dismissed the appeal. It further said that “Having regard to what the Hon'ble Supreme Court has laid down about ‘Duty of Care’ to be followed by medical professional, viewed from any angle it cannot be construed that ‘Duty of Care’ of the treating Doctor/ head of the department, who is in this case has

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<sup>263</sup> MANU/CF/0352/2019.

written the ‘Protocol’, ‘Ends’ with giving the Prescription. At the cost of repetition, we are of the considered view that the Doctor is vicariously liable for the acts of his team which assists him in every sphere in rendering treatment to the Patient.

A medical trust rendering service to its nurses comes within the meaning of a ‘consumer’

**Lilavati Kirttilal Mehta Medical Trust v. Unique Shanti Developers and Ors.<sup>264</sup>**

**Facts:** The Unique Shanti Developers had developed two buildings Madhuvan with thirty two 1BHK flats in colony, out of which the Lilavati Medical trust took the possession of 29 flats for provision of hostel facilities to nurses employed by trust. Agreement to sell was executed in respect of each flat and the entire consideration amount was paid for the same. The architect issued the completion certificate and flats were used for the purpose of hostel facilities. However within 2-3 years of completion of the project, because of poor building quality the structure became dilapidated and vacated the flats. The Lilavati trust filed a complaint before the national commission. The National Commission dismissed the complaint, on the ground that, the Appellant trust was not a ‘consumer’ within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 as the aforesaid section excludes a person who obtains goods and services for a ‘commercial purpose’. Since providing hostel facility to the nurses is directly connected to the commercial purpose of running the hospital, and is consideration for the work done by them in the hospital, the Appellant would not be a ‘consumer’ under the 1986 Act. Hence, present appeal.

**Issue:** Whether a transaction carried out by the Lilavati is for a commercial purpose and whether it would depend upon the facts and circumstances of each case?

**Decision:** Supreme Court allowing the appeal held that the straight jacket formula cannot be adopted in every case, the following broad principles can

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264 MANU/SC/1574/2019.

be culled out for determining whether an activity or transaction is for a commercial purpose (1) ‘commercial purpose’ is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities (2) The purchase of the good or service should have a close and direct nexus with a profit-generating activity. (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 (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.

Duty of Care not ends with the surgery

**Pankaj Toprani and Others v. Bombay Hospital and Research (NCDRC)<sup>265</sup>**

**Facts:** Ranjit Toprani was operated by Dr. PB Desai. The patient died during the pendency of the Complaint. He was admitted and operated for Carcinoma of the Sigmoid Colon. After the surgery, the attendants and the patient were informed by Dr. Desai that the operation was successful and that the patient would be transferred to the ward. To their shock, the patient was shifted to the post-operative ICU, which is situated on the third floor of the hospital building. While the patient’s attendant, waited outside the ICU, unaware of the patient’s condition, suddenly there was a commotion inside the ICU and they saw the patient having convulsions and was being helped to breathe with the help of an Ambu bag. The attending Doctor, who is Dr. Desai’s assistant, informed the attendants that the patient had suffered a Bradycardia Attack and had to be resuscitated. The Ambu bag was replaced with the ventilator, the only one available in the ICU. Moreover, Dr. Wagle was not available during this time and only after 2 ½ hours instructions were given for the patient to be shifted to the ICU on the 12<sup>th</sup> floor. The patient was put

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265 First Appeal No. 101 of 2016.

on ventilator and never regained consciousness, he remained in the hospital for eight months till February 14, 2005 and thereafter he was taken home where he was on support of oxygen concentrator but in a coma. In the discharge summary given on the same day it was stated- 'Patient is unconscious in a vegetative state'. This appeal was filed by the deceased Ranjit Toprani's family challenging State Consumer Disputes Redressal Commission's order rejecting allegations of negligence against the hospital and the doctors.

**Issue:** Whether the duty of doctor ends with the surgery?

**Decision:** The Commission referred to the Supreme Court's judgement in *Smt. Savita Garg v. Director, National Heart Institute* (2004) 8 SCC 56, wherein a principle was laid down that the onus shifts on the hospital to explain the exact line of treatment rendered and as to why a particular condition had occurred. Then, the Commission highlighted the observations of the Apex Court in the case of *Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Babu Godbole* AIR 1969 SC 128, wherein duties of a medical practitioner were defined- 1. he owes a duty of care in deciding whether to undertake the case, 2. he owes a duty of care in deciding what treatment to give and, 3. he owes a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action for negligence to the patient, the judgement said. In the instant case NCDRC said that there is negligence in the treatment rendered to the Patient with respect to the time and manner in which the Patient was shifted from the 3 floor ICU to the 12 floor ICU, the unexplained cause for Bradycardia, which is not in recorded, the absence of medical record specifying the treatment rendered to the Patient between 9 am to 10.30 am in the ICU. Thus, the State Commission's order was set aside and the Commission noted ruled that the bills filed towards medical expenses amounting to Rs. 16,93,010.00/- (excluding the medi-claim amount of Rs. 3,75,000/-) and the expenses incurred post-discharge, when the Patient was in a coma, and also the mental agony suffered by the Patient's family, that awarding an amount of Rs. 30,00,000/- to be paid by the hospital would meet the ends of justice. NCDRC also asked the doctors to pay costs of Rs. 1,00,000/- jointly and severally as they believe that that 'Duty of Care does not end with the Surgery.

**Tanveer Jahan v. All India Institute of Medical Science and Ors.<sup>266</sup>**

**FACTS:** Complainant alleging that, it was a simple operation of removal of gall stones with gall bladder (cholecystectomy), but the OP-2 Dr. S. Chumbar performed laparoscopic cholecystectomy operation negligently on 02/05/1998 and prematurely discharged on 04/05/1998 the patient which resulted into further complications and sufferings to the patient. Thus, the patient underwent number of corrective surgeries. She suffered heavy expenditure and lost mental peace of her family. Complainant filed complaint under section 21 of the consumer protection act.

**Issue:** Whether there was any deficiency in service or any negligence during the treatment of patient at AIIMS?

**Decision:** Court held it was clear that on 04.05.1998 at 8.00 a.m., the condition of patient was fair. No fresh complaints. The patient was taking adequate fluids, passing flatus, pulse rate was 80/mm, blood pressure was 120/70, abdomen was soft and no tenderness. At the time of discharge, Patient's vitals (signs) were stable and the patient was taking orally and passing stools normally. Her drainage tube was also taken out. In the instant case, admittedly the AIIMS is one of the premier institute in India. Dr. S. Chumbar (OP-2) has vast experience of doing laparoscopic surgeries. The entire medical record is maintained properly the every details of the treatment. We are unable to find out any procedural shortcomings or deficiency for OP-2 or the team of doctors in his surgical unit 2. Post operatively the patient was monitored properly. Generally, the laparoscopic cholecystectomy is a day care procedure and patient may be discharged after a day or two. According to the discharge slip, the patient was discharged after proper review, there was no biliary discharge and the condition of patient was satisfactory. It further observed that a doctor cannot be accused of medical negligence unless it is substantiated with the opinion of medical experts, the Supreme Court has said. A bench of Justices Mr. Abhay Manohar Sapre and Mr. Vineet Saran also said that there has to be "a direct nexus" between sufferings of a patient and the medical aid that she has received, to sue the doctor. "Suffering from

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266 MANU/CF/0321/2020.

ailment by the patient after surgery". The court said the Complainant had failed to prove that her sufferings were results of improper performance of conventional surgery by the doctor and that if the surgery had been successful, she would not have suffered any kind of these ailments. It also noted the doctor had taken consent from her husband when he found that the open surgery had to be performed during her operation. Hence, it is not feasible to attribute negligence/deficiency on the OP hospital and doctors, it is difficult to conclusively establish medical negligence/deficiency on the OP hospital and doctors.

**Tosoh India Pvt. Ltd. (Formerly Lilac Medicare Pvt. Ltd.) (Formerlyu  
Lilac Medicare Pvt. Ltd.,) v. Ram Kumar and Others<sup>267</sup>**

**Facts:** The Complainant/Respondent No. 1 namely Shri Ram Kumar is running a Pathology Laboratory at two locations, and claims to be earning his livelihood from the income of the said laboratory. He purchased an instrument called 'Lumax' from the petitioner company for the price of Rs. 3,79,250/- . A chemical kit for being used in the said instrument was also purchased by the complainant, for a price of Rs. 1,20,000/- . Alleging defects in the instrument purchased by him, the Complainant approached the concerned District Forum, seeking refund of the price which he had paid for the instrument and for the chemical kit with interest etc. The purchase having been made through Respondent No. 2 Sharda Enterprises, the aforesaid firm was also impleaded as one of the Opposite Parties in the consumer complaint. The consumer complaint was dismissed by the District Forum holding that the Complainant was not a consumer within the meaning of Consumer Protection Act. Being aggrieved from the order passed by the District Forum, the Complainant approached the concerned State Commission by way of an appeal. The State Commission allowed the appeal holding that the Complainant was a consumer within the meaning of the Consumer Protection Act and remitted the complaint to the District Forum for being decided on merits. Being aggrieved from the order passed by the State Commission, the petitioner is before this Commission by way of this revision petition.

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<sup>267</sup> 2020 SCC OnLine NCDRC 21.

**Issue:** Whether Respondent no.1 (Shri Ram Kumar) fall within the definition of Consumer defined in Sec. 2(1)(d) of the Consumer Protection Act, 1986?

**Decision:** It appears to the court that the affidavit filed by the Complainant on the direction of this Commission shows that though he has two work places, only two employees have been engaged by him, only one of whom is a technically qualified person. Thus, only one technically qualified person is assisting the Complainant in analyzing the blood samples collected by him. At one location, some tests are carry out by the technician employed by the Complainant whereas at the other place, the Complainant himself analysis such samples. In Paramount Digital Colour Lab case the Hon'ble Supreme Court inter-alia held that if a person trains another person to operate the machine so as to produce a final product based on skill and effort in the matter of photography and developing the same, cannot take such person out of the definition of 'consumer'.

Applying the aforesaid proposition to the present case, engagement of only one technically qualified person for analyzing the blood samples would not take the Complainant out of the definition of 'consumer', when he himself is a technically qualified person and is engaged in analysis the blood samples so collected, and there is no evidence of such activity being carried by the Complainant on a large scale. The quality of the analysis of a blood sample would depend not only on the analyzer used by the pathologist but also on the qualification and quality of the pathologist himself. Therefore, it would be difficult to dispute that the Complainant who is himself engaged in analyzing the blood samples albeit with the help of the technician engaged by him, would be a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act.

Reasonable care of patient not taken

**Post Graduate Institute of Medical Education and Research, Chandigarh and another v. Jasmine D/o Harbans Singh and others.<sup>268</sup>**

**Facts:** Pritpal Kaur, the patient was suffering from eye problem and was admitted in emergency at Advance Eye Care Centre in the Opposite Party

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268 2018 SCC OnLine NCDRC 623.

(OP) hospital, the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh. She was also suffering from other health problems, like fever, difficulty in breathing with pain in abdomen, backache and diarrhoea. The on duty doctor treated her and discharged her with the advice of taking some antibiotics. The Complainant alleges that the patient should have been referred to Cardiac emergency as she was suffering from a known case of Restrictive Cardiomyopathy having diastolic heart failure, raised JVP with tender hepatomegaly. On the same day Complainant took his wife to Medical OPD at the OP Hospital who referred her to the Cardiac OPD Doctor (OP2). He examined her and prescribed her some tablets. Without consulting any senior Cardiologist he ignored extremely low BP and serious condition of the patient. The Complainant took her back home but again, he brought her to Advanced Eye Centre for further check-up, their one of the Doctor examined her and advised her to take ENT consultation. Accordingly, the patient had visited ENT OPD. Despite her sick condition with low BP, ENT Doctor did not advise the patient to get admitted in hospital. The doctors failed to realise the seriousness and did not admit her either in ICU or CCU. Thereafter, the Complainant took the patient to PGI in more deteriorated condition. She was treated in medical emergency ward by junior doctors. For 24 hours, no doctor either from cardiology or medicine attended her. Complainant had made several requests to the doctors to shift the patient to ICU/CCU, but till her death, she was not shifted to ICU. Ultimately the patient died. It was alleged that the death was due to medical negligence and deficiency in service on the doctors at the Post Graduate Institute of Medical Education. Harbans Singh, the husband of deceased patient, filed a complaint before the State Commission seeking proper relief. Harbans Singh died during the pendency of the complaint. Therefore, his three daughters were brought as legal heirs on record. The State Commission, on the basis of evidence given by both parties, allowed the complaint and directed the Opposite Party to pay compensation.

**Issue:** Whether the opposite party exercised reasonable care in treating the patient?

**Decision:** The contentions of the OP that there was no evidence to prove that the patient was required to be shifted to ICU or CCU, the State Commission has ignored the expert opinion given and the patient was under treatment of team of expert doctors were rejected by National Commission. National Commission held that the Opposite Party failed to exercise reasonable care with the patient. It made the Opposite Party hospital vicariously liable for the acts of its doctors, directing it to pay a compensation of Rs. 6,60,000/-.

**Shoda Devi v. Ddu/Ripon, Hospital, Shimla and others<sup>269</sup>**

**Facts:** The Complainant, Ms. Shoda Devi was suffering from abdominal pain and some menstrual problem. She visited the Deen Dayal Upadhyay Hospital, Opposite Party 1 (OP1). She was examined by a Doctor Opposite Party 2 (OP2). Tests were conducted; she was diagnosed as having fibroid and endometrial hyperplasia. She was advised to undergo a minor operation. It was alleged that the operation was performed without any anaesthesia and on the instructions of OP2, an injection in her right forearm was given by the staff nurse (OP3). During administration of injection, the Complainant felt acute pain in the right hand, she informed the same to the OP2, but OP2 ignored her cries and the unbearable pain undergone by her. Throughout the procedure, she continued to feel acute pain in her entire right forearm. No remedial measures were taken. The doctors attended to her after considerable delay and thereafter, referred her to Indira Gandhi Medical College & Hospital, Shimla, where amputation of her right forearm above elbow was performed. The Complainant filed a complaint before the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla for alleged medical negligence against the Opposite Parties, which led to amputation of her right hand and 100% disability. The State Commission dismissed the complaint. The Complainant filed an appeal before the National Commission.

**Issue:** Whether there was negligence on part of the Hospital?

**Decision:** NCDRC considered the facts that the patient was referred to IGMCH in an inhumane manner. The Opposite Parties did not call any ambulance, although it was heavily raining at that time. Even though the

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<sup>269</sup> 2018 SCC OnLine NCDRC 619.

patient was suffering pain throughout the procedure, the doctors did not cater to her. The extensive delay caused left no possibility of saving the arm. Thus, the Opposite Parties were held negligent and deficient in providing service to the patient. The OP1-Hospital was made vicariously liable for the actions of OP2 and OP3. An amount of Rs. 2,93,526/- was ordered as ex gratia amount along with Rs. 2,00,000/- as compensation to the Complainant.

Failure to perform surgery in ICU

**Bijoy Sinha Roy (d) By Lr. v. Biswanath Das & Ors<sup>270</sup>**

**Facts:** This complaint is filed by legal heirs of the deceased Bijoy Roy who had some menstrual problem. The Complainants had consulted Dr. Bishwanath Das (respondent No.1) a Gynaecologist, it was found that the patient had multiple fibroids uterus. She was advised to undergo Hysterectomy. After about five months, she had severe bleeding and was advised emergency Hysterectomy at Ashutosh Nursing Home. She was also suffering from high blood pressure and her haemoglobin was around 7 gm% which indicated that she was anaemic. The treatment was given for the said problems but was not success. Finally, operation was conducted after which she did not regain consciousness and since the Nursing Home did not have the ICU facility, she was shifted to Repose Nursing Home and thereafter to SSKM Hospital where she died on 17<sup>th</sup> January, 1994. The Appellant filed a complaint before the State Commission on 16<sup>th</sup> June, 1994 alleging the decision to perform surgery without first controlling blood pressure and haemoglobin amounted to medical negligence. The Appellant also alleged that the surgery was not an emergency but a planned one which was conducted six months after the disease first surfaced and also the decision to perform surgery at a nursing home which did not have the ICU for post-operative needs amounted to medical negligence. The State Commission, vide order dated 19<sup>th</sup> September, 2005, held that there was medical negligence as surgery was conducted without controlling the blood pressure and haemoglobin. The Complainant as well as the opposite parties preferred appeals. The National Commission reversed the above finding as procedure could be done on a

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<sup>270</sup> (2018) 13 SCC 224.

patient with diastolic blood pressure of not more than 110 mm Hg and hemoglobin concentration of even up to 6 g/dl. Hence the Complainants preferred appeal before hon'ble Supreme Court.

**Issue:** Whether there was negligence on the part of the Respondent?

**Decision:** On Appeal to the Supreme Court by the Complainant it was pointed out by the Hon'ble Supreme Court that neither the State nor the National Consumer Disputes Redressal Commission had examined the plea of the Appellant in this case that the operation should not have been performed at a nursing home which did not have the ICU when it could be reasonably foreseen that without ICU there was post-operative risk to the life of the patient. Supreme Court through its order awarded the compensation of Rs. 5 lakh to the heirs of the deceased for negligence on the part of the Respondent.

Faulty insertion of Double Lumen Tube

**Manipal Hospital v. J. Douglas Luiz<sup>271</sup>**

**Facts:** The Complainant patient Mr. J. Douglas Louis underwent thoracotomy surgery for carcinoma of left lung with left pneumonectomy on 31-10-2003 at the Manipal Hospital (OP1). It was performed by Cardio Thoracic Surgeon assisted by a Cardiac Surgeon at OP1. When the patient was shifted to ICU for recovery, after regaining consciousness, he experienced severe hoarseness of his voice and was unable to speak. On enquiry doctors informed that he would regain his voice after few months. He was discharged from hospital with no improvement in his voice. The Complainant alleged that OP-hospital failed to ascertain the cause of hoarseness; it did not seek opinion from ENT Department. Anaesthesia was administered using Double lumen tube by a trainee anaesthetist, instead of expert anaesthetist, wrong and repeated insertion of the tube has resulted in irreparable damage to the patient's vocal cord. Though the speech was therapy taken by the patient there was no improvement. The speech therapist referred him to another Doctor who performed Fibre Optic Laryngoscopy (FOL) and opined that the patient had posterior subluxation of left Arytenoid and issued the report accordingly. He also informed that there was very little hope of cure. When patient immediately

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<sup>271</sup> 2017 SCC OnLine NCDRC 858.

approached the OP Hospital he was advised to consult HOD of ENT for the opinion, who after examination admitted verbally that there was problem with left Arytenoid but he was hesitant to provide the written record of the same. The Complainant further contacted eminent ENT surgeon of Mumbai, he confirmed that the patient had anterior subluxation of arytenoid with left vocal cord paralysis. Thereafter, alleging medical negligence on the part of OP1-hospital and the doctors therein, the Complainant filed the complaint before District Forum, Bangalore alleging medical negligence and prayed for compensation of Rs. 18 lakhs. The District Forum found the hospital guilty of medical negligence and ordered OP-1/hospital to pay a sum of Rs. 5,00,000/- along with Rs. 5,000/- towards cost to the Complainant. Being aggrieved by the order of the District Forum, the parties filed cross appeals before the State Commission. Both the appeals were dismissed by the State Commission. During pendency of the revision petition, the patient expired and the legal heirs were brought on record. Both the parties filed the instant two revision petitions before National Commission.

**Issue:** Whether there was medical Negligence on the part of the Hospital?

**Decision:** Considering the material on record, the medical literature NCDRC opined that, the dislocation of left Arytenoid was only due to traumatic cause, which subsequently led to vocal cord paralysis. The Recurrent Laryngeal Nerve (RLN) injury will not cause dislocation of arytenoid. It was the result of faulty insertion of Double lumen tube during administration of anaesthesia to the patient.” NCDRC confirmed the medical negligence by the hospital and it held that looking at the entire facts and circumstances of the case there was no justification for enhancement of the award given by the State Commission. Thus the order of State Commission was upheld.

Missing patient records

**Sushmita Roychowdhury and Ors., v. B.M. Birla Heart Research Centre and Ors.,<sup>272</sup>**

**Facts:** An appeal was filed by the wife and son of deceased (patient), questioning the correctness and legality of the order passed by the SCDRC,

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272 2017 SCC OnLine NCDRC 976.

Kolkata. The Patient was a plasticising homeopathy doctor who was about 70 years old and had just retired from service in central Govt. On. 20.05.1998 he felt uneasiness in the chest and he got some pathological tests done. On next day he was admitted to SSKM hospital and was diagnosed as suffering from unstable angina. However for better treatment he was discharged from hospital on 09.06.1998. On the next day patients family consulted the treating doctor (respondent 2) at B.M Birla Heart research centre (OP 1). On examination the doctor advised coronary angiography (CAG). He advised admission for necessary investigations on 15.06.1998. On admission serum analysis was done by another doctor respondent no. 3 which showed that the patient was suffering from hepatitis C (HCV+) and his glucose fasting level was 98 mg./dl. CAG conducted on 16.06.1998 showed that the patient had severe triple vessel disease and grade 3 mitral regurgitation. He was advised coronary artery bypass graft surgery (CABG) with mitral valve replacement. Thereafter two samples of serum were sent to different hospitals for second opinion and reports were received on 18.06.1998 which suggested that patient is not suffering from hepatitis C as diagnosed by Respondent 3. Accordingly CABG was planned for 25.06.1998. The patients family was asked to arrange blood which they did on 24.06.1998 but suddenly the operation was postponed. The surgery was performed on 30.06.1998. The patient did not regain consciousness after surgery and remained on ventilator support till he was declared dead by hospital on 11.07.1998. As per death certificate, the cause of death was myocardial failure, multi organ dysfunction and post CABG status. The complaint was filed by patient's family members alleging medical negligence on following grounds: 1. Operation was delayed despite the deteriorating health condition of patient. 2. The myocardial damage which occurred because of delay in surgery. 3. No medicines were prescribed to the patient. 4. No post-operative care. 5. As per master register which was maintained by hospital, patient was declared dead on 30.6.1998 but was kept on ventilator till 11.08.1998. 6. Consent was not taken before performing CABG. The Complainant's prayed for a total compensation of Rs. 19, 99,000/- for deficiency of service.

**Issue:** Whether there was a deficiency in service by the Opposite Parties i.e., hospital and doctors of hospital?

**Decision:** NCDRC held that there was deficiency on the part of the hospital in maintaining proper record of the patient as there is no satisfactory explanation for the missing treatment prescriptions and the goof up in the master register of operation theatre which indicates that the patient expired on 30.06.1998 i.e. on the date of surgery and not on 11.07.1998 as declared later by hospital. The court directed the hospital to pay compensation of Rs. 30000/- to patients family within 4 weeks from the date of receipt of copy of the said order. On failing the said amount shall carry 9% interest p.a from the date of complaint being filed till actual realization of hospital.

Proving wrong patient records

**Anil Dutt and Another v. Vishesh Hospital, Indore and others<sup>273</sup>**

**Facts:** Mrs. Anju Dutt, the wife of Complainant No.1 (“patient”) was pregnant and was under consultation of Dr. Indira Vyas, a Gynaecologist. She advised for ultrasonography (USG) to ensure well-being of child, it was done on 20.01.2009 by Dr. G.S. Saluja, the OP3, and reported it as intrauterine 20 weeks and 6 days gestational age, with no abnormal findings. The “Foetal Spine, Trunk & Limbs are Normal”. On the basis of the said report Dr. Indra Vyas continued her regular treatment and check-ups. After 3 months, i.e. at 32 weeks of pregnancy, on 22.04.2009, 2<sup>nd</sup> USG was performed by OP2 Dr. Kushalendra Soni. It was reported as 32 weeks 01 day (+ 2 weeks) “Severe Oligohydramnios” and the “Foetal Spine, Trunk & Limbs are Normal”. The allegation of Complainants is that, both the doctors, OP2 and OP3 are qualified Radiologists/Sinologists, but due to casual approach, negligence and lack of care towards the patient, gave wrong reports at both occasions, which resulted into serious consequences. On the basis of 2nd USG report, Dr. Indra Vyas continued the treatment till May, 2009. Thereafter, patient went to Devas where she remained under treatment in Devas Hospital from Dr. Shakuntala Jadhav, a Gynaecologist and Obstetrician. On 18.05.2009, patient gave birth to a female baby which was found not fully developed. New-born’s left arm and kidney were missing and even lungs

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<sup>273</sup> 2016 SCC OnLine NCDRC 239.

were not completely developed. The foetal weight was 1500 gm. only, instead of 2500 gm. Thus, it was medical incompetence and gross medical negligence. Patient approached Dr. Maheshwari, Child Specialist at Devas District Hospital, he advised to consult various experts. Also expressed that on account of wrong USG reports, no proper treatment was given for mother and child before birth, hence, the child did not develop fully. Therefore, the doctors expressed need for surgery in future for her neck and spine because of fused spinal cord. Child may have increased chances of paralysis. As the baby had a single kidney, there are chances of renal failure in near future. In this regard Complainant produced expert opinion from Dr. R. K. Sharma, a Forensic Medicine expert. It was further alleged that, due to wrong report, the patient did not go for MTP (medical termination of pregnancy) as per law under MTP Act. It was anxiety, agony and distress to the parents. Further, the grandmother of the child, Smt. Kala Dutt suffered severe heart attack after seeing the deformity in the new-born baby. She underwent bypass surgery, it caused expenses of Rs. 2.5 lakhs at Fortis Hospital, New Delhi. Since after that, the grandmother was under physiotherapy, incurring regular expenses. Therefore, for alleged medical negligence, Smt. Anju Dutt/ patient lodged an FIR on 08.06.2009 at Police Station, Palasia, Indore. Thus she files a case against the OPs 1, 2 and 3.

**Issue:** Whether there was a deficiency of service by the Opposite Parties (Doctors of the Hospital)?

**Decision:** NCDRC held it to be a medical negligence case and directed the OPs (1,2 and 3) to pay a sum of Rs.15,00,000/- jointly and severally to the Complainants. It was further directed that, the OPs shall deposit entire amount in a fixed deposit, in any nationalised bank, in the name of the child and the regular periodic interest accrued on it, be paid to the mother, till the baby attains 21 years. The order shall be complied with within 6 weeks, from the date of receipt of this order, otherwise, it will carry interest @ 12% per annum, since the date of pronouncement, till realisation. There shall be no order as to costs.

Providing fake reports

**Alka Srivastava v. Base Hospital, Delhi Cantonment<sup>274</sup>**

**Facts:** The Complainant, Ms. Alka Srivastava, the wife of Armed Forces personnel, who delivered a girl suffering from deformities which need supervision throughout the life, due to the negligence and deficient services of the doctors of Army Hospital and Base Hospital at Delhi Cantonment. During her pregnancy, the Complainant took treatment and attended to regular check-ups and ultrasound study (USG) at Base Hospital and Army Hospital. Even after transvaginal ultrasound, performed at Army Hospital it was informed to the Complainant that the foetus was well developed. Later, when she suffered pain, she was rushed to Singhal Nursing Home, where doctor performed ultrasound and found foetal anomalies like Spinal Bifida, Meningomyelocele, and hydrocephalus. This was also confirmed at Base Hospital. Later, Complainant delivered a female child with lack of spontaneous movements of lower limbs, lack of anal reflex and open neural tube defect. The attending doctor opined that the child may need a number of surgeries, throughout the life and there are no chances of proper cure. Hence, alleging deficiency in service and for the negligence caused by the doctors at Base Hospital and Army Hospital, Complainant approached District Forum which allowed the complaint and directed Base Hospital and Army Hospital to pay Rs. 5 lakh as compensation to the Complainant along with Rs. 5,000/- as costs.

**Issue:** Whether there was a medical negligence on the part of the hospitals?

**Decision:** In appeal, State Commission decided in favour of Base Hospital and Army Hospital and dismissed the complaint. After perusal of relevant documents, including the medical record of the Complainant, Commission noted that failure to diagnose the obvious foetal anomalies in 12<sup>th</sup>, 14<sup>th</sup> and 21<sup>st</sup> weeks of gestation by the doctors of Base Hospital and Army Hospital indicate that there was a breach in duty, as the doctors had not exercised their reasonable degree of skill and care. While rendering relief to the

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<sup>274</sup> 2015 SCC OnLine NCDRC 175.

Complainant, NCDRC directed Base Hospital and Army Hospital to abide by their undertaking that the child, who was the daughter of a serving Armed Forces personnel, was entitled for free medical care for her entire life along with the required social and infrastructure support, and in addition, to pay Rs. 5 lakh compensation and Rs. 5,000/- as litigation charges, to the Complainant.

Carelessness of doctor leading to death of patient

**Amit Sarkar and another v. PGIMER and another's<sup>275</sup>**

**Facts:** The only daughter of Complainants-Ms. Anupama, aged about 16 years, studying in Class XI was travelling in a CTU bus on 17.07.2012 from her school to her residence. The bus was being driven rashly and negligently by the bus driver. It is stated, that in the absence of the conductor, she fell down from the bus and her left leg was crushed under the rear tyre of the same. She was taken to Post Graduate Institute of Medical Education & Research, Chandigarh (for short, 'PGI') where she died on 24.07.2012, due to medical negligence. It is stated that injured Ms. Anupama was taken to Advance Trauma Centre of PGI (for short, 'ATC') by the police, where her left leg was bandaged by Dr. Jujhar, Junior Resident (OP No.3). It is alleged that bandaging was done in a most incompetent manner, as blood kept on oozing out. It is further stated, that Complainants were told that injured girl required an emergency operation which was being arranged by the Doctors concerned, whereas X-rays and other tests were carried out. It is alleged; that the required operation was never arranged and injured continued to suffer in excruciating pain, both mentally and physically. The condition of injured started deteriorating day by day, but no medical attention was given to her by PGI doctors. Even the bandage was not changed nor the wounds washed for days together, by ATC doctors. The attitude of doctors on duty was most insensitive and opposed to the medical norms. Ultimately, it resulted in development of gangrene and septicaemia and Opposite Party No.1-Hospital amputated the left lower limb of Ms. Anupama, in a projected attempt to prevent the gangrene from spreading to other parts of the body.

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275 2015 SCC OnLine NCDRC 13.

The doctors of Opposite Party No.1 failed to check or control the spread of gangrene, leading finally to the untimely death of Ms. Anupama on 24<sup>th</sup> July, 2012 at O.P. No.1-Hospital. It is further stated, that O.P.No.1-Hospital itself conducted the post-mortem vide PMR No. 16969 dated 24.07.2012. The perusal of PMR clearly showed, that Ms. Anupama was duly admitted to O.P. No.1-Hospital on 17.07.2012. Thus, there was medical negligence on the part of O.P. No.1-Hospital and its concerned doctors. It is further stated that O.P. No.1-Hospital was taking the plea of overcrowding in its OTs. However, the precious life could have been saved even without operation, had adequate medical care and treatment been provided. The cause of infection and gangrene was because the dressings and bandages of the patient were never changed. The deep wounds were never washed hygienically and medical treatment prior to operation was not adequately provided. In case, O.P. No.1-Hospital was unable to provide adequate and proper medical care to the patient, it should have referred her to some other Hospital, which also it failed to do. It is further alleged, that O.P. No.1–Hospital was deliberately keeping the treatment history and medical papers of the deceased under wraps, so that the same could be manipulated to their advantage and helps them escape the charge of medical negligence and apathy.

**Issue:** Whether there was medical negligence on the part of the Opposite Party?

**Decision:** Therefore, we hold that negligence on the part of O.P. No.1-Hospital has been clearly established. Therefore, Appeal No. 333 of 2013 is liable to be dismissed. Now, coming to (First Appeal No. 320 of 2013) for enhancement, the State Commission has awarded a sum of Rs. 7,00,000/- (Rupees Seven Lakhs only) to the Complainants. In addition, CTU has already paid Rs. 3,00,000/- (Rupees Three Lakhs only) to the Complainants on humanitarian ground. The Complainants have lost their only child who was aged about 16 years old. It is only the parents of such child can feel the trauma under which they have to go through past several years and for future also they have to bear with this irreparable loss. No amount of money can compensate their sufferings and agony, since Complainants have high hope

from their brilliant daughter. So, keeping in view the principles of law for awarding compensation in medical negligence cases, as laid down by Hon'ble Supreme Court in "*Dr. Kunal Saha v. AMRI and others*" we deem it appropriate to award a further sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the Complainants, since they have to bear with all the trauma, mental agony, pain and sufferings, throughout their remaining life. Accordingly, (First Appeal No. 320 of 2013) filed by the Complainants is partly allowed. The Appellants in this appeal, shall be entitled to a further sum of Rs. 10,00,000/- (Rupees Ten Lakhs only), in addition to sum of Rs. 7,00,000/- (Rupees Seven Lakhs only) as already awarded by the State Commission besides Rs. 3,00,000/- (Rupees Three Lakhs only) already paid by the CTU. This amount shall be payable by O.P. No.1-Hospital. O.P. No.1- Hospital is directed to deposit the entire awarded amount by way of demand draft in the name of Complainants with this Commission, within eight weeks. O.P. No.1-Hospital shall make adjustment for the amount already paid to the Complainants or deposited with consumer form, if any. In case, O.P. No.1-Hospital fails to comply the aforesaid directions, within the specified period, then it shall be liable to pay interest @ 9% p.a. till realization.

Compensation payable for death of patient

**Dr. Balram Prasad and others v. Dr. Kunal Saha and another<sup>276</sup>**

**Facts:** Appellant/Claimant's wife (deceased) was admitted in Respondent/hospital for treatment - Deceased had died due to medical negligence by Respondents - Appellant filed petition claiming compensation before National Commission claiming compensation for Rs. 77,07,45,000/- and later same was amended by claiming another sum of Rs. 20,00,00,000/- National Commission held doctors and Respondents negligent in treating wife of claimant on account of which she died and awarded compensation. Hence, instant appeals were, whether claim of claimant for enhancement of compensation was justified - Held, decision of National Commission in confining grant of compensation to original claim of Rs. 77.7 crores preferred

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<sup>276</sup> (2014) 1 SCC 384.

by claimant under different heads and awarding meagre compensation under different heads in impugned judgment was wholly unsustainable. Thus, claimant was justified in claiming additional claim for determining just and reasonable compensation under different heads - Appeals disposed off. Determination of compensation - Whether National Commission was justified in adopting multiplier method to determine compensation and to award compensation in favour of claimant. Held, Court was sceptical about using a strait jacket multiplier method for determining quantum of compensation in medical negligence claims. Therefore, National Commission requires determining just, fair and reasonable compensation on basis of income that was being earned by deceased at the time of her death and other related claims on account of death of wife of claimant. Appeals disposed off. Whether claimant was entitled to interest on compensation that would be awarded - Held, National Commission did not grant any interest for long period of 15 years as case was pending before National Commission - Therefore, National Commission had committed error in not awarding interest on compensation - Appeals disposed off. Apportionment of compensation - Whether compensation awarded in impugned judgment and apportionment of compensation amount fastened on doctors and hospital requires interference and whether claimant was liable for contributory negligence and deduction of compensation - Held, claimant though over-anxious, did to patient what was necessary as a part of treatment - National Commission erred in reading in isolation statement of SC that claimant's action might have played some role for purpose of damage. Therefore, National Commission erred in holding that claimant had contributed to negligence of doctors and Hospital which resulted in death of his wife. Hence, set aside finding of National Commission and re-emphasize finding of SC that claimant did not contribute to negligence of doctors and Hospital which resulted in death of his wife.

**Decision:** A total amount of Rs. 6,08,00,550/- was awarded as compensation claimant under different heads with 6% interest per annum. Appeals disposed of.

Non-performance of pre-operative examination

**Pushpa Bhatnagar w/o Late Jai Prakash and others v. Varun Hospital, through its Director, Vishnupuri Uttar Pradesh and others<sup>277</sup>.**

**Facts:** Mr. Jaiprakash Bhatnagar, an advocate by profession since deceased (patient), on the evening of 17.01.2002, sustained fracture of upper arm near shoulder and took treatment in the nearby Ortho Care Centre. In the evening of 19.1.2002, he was admitted in Varun Hospital i.e. OP1 under care of Dr. K.K. Singh (OP3), an orthopaedic surgeon. Without performing any pre-operative examination, the anaesthetist Dr. Sanjay Bhargava (OP-2) fixed the operation on the next day morning. Accordingly, on 20-01-2002 at 6:30 A.M. the patient was taken to operation theatre, OP2 and OP3 performed the operation. At about 10 A.M., the OP doctors came out of OT and informed the patient's relatives that operation was successful at 9:15 A.M and patient will come out soon. Thereafter, at 10:45 A.M. the OP 2 and 3 came out and first time informed the Complainants and the other relatives that the patient expired due to heart attack in OT. Dr. Ajay Singhal, a cardiologist was called, it took almost 30 minutes, thereafter, the patient passed away. The post-mortem was conducted. At 11.00 A.M. the Complainant-1, Smt Pushpa Bhatnagar (wife of deceased) lodged a FIR under Section 304A, IPC against the OP for causing death due to negligence. Thereafter, in 2003, the Complainants filed complaint before the State Commission. Smt. Pushpa Bhatnagar, the Complainant/Appellant, filed this first appeal under Section 19 of the Consumer Protection Act, 1986 against the order dated 16-10-2014 passed by Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in State Commission in Complaint Case No.71 of 2003.

**Issue:** Whether there was a deficiency of service by the Opposite Parties (Doctors of the Hospital)?

**Decision:** It was held that the doctors were liable for the medical negligence due to which the family suffered distress and mental agony, therefore, we

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<sup>277</sup> 2016 SCC OnLine NCDRC 236.

award compensation in the sum of Rs. 2,00,000/- and Rs. 25,000/- towards cost of litigation. Therefore, the total compensation will be Rs. 13,80,000/- For the reasons stated herein above, we direct the OPs (1, 2 and 3) pay Rs. 13,80,000/- to the Complainants, jointly and severally, within 2 months from the date of receipt of this order, failing which, entire amount will carry the interest @ 10 % per annum from today i.e. date of pronouncement, till its realisation.

Conducting improper surgery

**Renu Aggarwal w/o Bhanu Aggarwal v. Director, Christian Medical College and Hospital and others<sup>278</sup>.**

**Facts:** The Complainant, Renu Aggarwal was initially operated by Professor Mary Abraham for ectopic pregnancy on 04-10-2010 and discharged on 12-10-2010 from CMC, Ludhiana (OP1). Thereafter, she approached OP-hospital for persistent pain in abdomen. The second operation was performed by a team of doctors. Second emergency operation was performed by the team of doctors on 25-10-2010. It was for removal of foreign body and resection of bowel. The team of doctors performed the resection anastomosis of intestine and the patient was discharged on 08-11-2010. Therefore, alleging medical negligence, the Complainant filed complaint before the State Commission against OPs praying compensation of Rs. 40,00,000/- for medical negligence. The instant first appeal is filed by Smt. Renu Aggarwal, the Complainant, against the order dated 27-08-2015 of Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as State Commission) in the Consumer Complaint No. 60 of 2011 whereby the State Commission awarded compensation of Rs. 3,00,000/- for the gross negligence committed by the team of doctors at OP1 i.e. Christian Medical College, Ludhiana.

**Issue:** Whether there was a deficiency of service by the Opposite Parties (Doctors of the Hospital)?

**Decision:** This appeal was filed for enhancement of compensation. The relevant facts in brief to dispose of this appeal are that it was settled law

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<sup>278</sup> 2016 SCC OnLine NCDRC 1693.

that hospital is vicariously liable for the acts of the doctors. The OP1 is vicariously liable for the act of late Dr. Mary Abraham. This view dovetails from the judgment of Hon'ble Apex Court in *Savita Garg v. National Heart Institute*, (2004) 8 SSC 56 2004 Indlaw SC 845, it was also followed in case of *Balram Prasad v. Kunal Saha*, (2014) 1 SCC 384 2013 Indlaw SC 696. Therefore, considering the facts and circumstances of instant case, the first appeal and modify the order of the State Commission as to enhance the compensation from Rs. 3,00,000/- to Rs. 6,00,000/-. Accordingly, the OP-1 is directed to pay Rs. 6,00,000/- to the Complainant, within four weeks from the date of receipt of copy of this order, otherwise, it will carry interest at the rate of 9% per annum, till its realisation. Appeal was disposed of.

Death of patient after treatment

**Sheela Hirba Naik Gaunekar v. Apollo Hospitals Ltd. and Ors<sup>279</sup>**

**Facts:** The Complainant is the wife of the deceased. Gaunekar, who underwent angioplasty treatment in the Apollo Hospitals Ltd., Chennai. Angioplasty procedure was conducted on 14.05.1996. The patient died shortly thereafter of a heart attack on 18.05.1996. The Complainant-wife preferred a claim petition before the National Commission alleging that the death of her husband was on account of the medical negligence on the part of the hospital and its doctors and due to deficiency of service. Thus, she is entitled to compensation for a sum of Rs. 70 lakhs. The Commission heard the Complainant-wife and the Respondent Hospital, recorded evidence adduced by both the parties and examined the correctness of the claim made by the Complainant-wife. The Commission also examined Dr. Mathews Samuel Kalarickal, the doctor who performed the surgery. The Commission after examining the evidence and the relevant records came to the conclusion that there was negligence on the part of the hospital. The Commission also awarded an amount of Rs. 2 lakhs along with interest at 6% p.a as compensation to the Complainant. Thus, the correctness of these findings has been questioned by the Respondent-Apollo Hospitals in the connected appeal filed by it, urging that the said findings are not based on proper

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<sup>279</sup> (2018) 12 SCC 699.

evaluation of evidence on record. Who further contended that the death of the deceased had been caused due to heart failure and therefore, the finding recorded by the Commission that death had occurred as a result of medical negligence is an erroneous finding. It further contended that the finding recorded by the Commission in awarding the amount as compensation, is also not legally correct based on any substantial evidence.

**Issue:** Whether the death of the deceased has occurred due to Medical Negligence?

**Decision:** The Hon'ble Supreme Court affirmed the findings recorded by the Commission on the question of medical negligence and deficiency in services rendered by the Respondent-Hospital. With respect to the decision of the Commission on awarding compensation, the income tax declaration filed by the deceased to the during the financial year in which death had occurred was taken on record as evidence on behalf of the Complainant. The Court also applied the multiplier method as adopted in the Motor Vehicles Act, 1988. As the litigation has been going on for nearly twenty years, it awarded Rs. 40 lakhs as compensation. On account of mental agony, loss of head of the family, loss of consortium and loss of love and affection, a consolidated sum of Rs. 10 lakhs was awarded. Thus, a total amount of Rs. 50 lakhs was awarded as compensation in toto. Further, interest has to be awarded at 9% per annum, instead of 6% per annum, from the date of the institution of the complaint till the date of payment. Dr. Mathews was also directed to pay Rs. 10 lakhs with proportionate interest to the Complainant, out of total of Rs. 50 lakhs. The hospital was directed to comply with this order and submit compliance report to the Registry of this Court within eight weeks from the date of receipt of the copy of the Order.

Patient suffering from side-effects

**Bibekananda Panigrahi v. Prime Hospitals Ltd.**<sup>280</sup>

**Facts:** The Commission was hearing an appeal filed by a person, whose father had appendicitis, and after the operation was performed by the Respondent

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<sup>280</sup> 2015 SCC OnLine NCDRC 1404.

Doctor, the patient developed fecal fistula, subsequently suffered septicemia and thereafter passed away. Alleging medical negligence, Appellant approached State Consumer Commission and argued that his father had appendicitis, which could be treated by medicines. Also the operation was not performed properly by the Respondent Doctor, due to which the patient developed fecal fistula and died.

**Issue:** Whether there was a deficiency in services by the Opposite Parties (Doctors)?

**Decision:** State Commission dismissed the complaint and feeling aggrieved, Appellant filed appeal before NCDRC. After perusing the medical history of the patient and hearing both the parties, NCDRC observed that patient was presented with acute appendicitis and high fever. The patient's blood sugar at the time of admission was also very high. As the patient was diabetic; it was the additional cause for poor healing of wound. The Commission also went through medical literature and several books on surgery and noted that when the appendix is perforated or gangrenous with peri-appendicitis, the frequency of septic complications reaches as much as 30% which includes wound infection, intra-abdominal abscess, fistula formation, and localized or diffused peritonitis. The OP (Doctor) had taken utmost care and operated upon him as an emergency. The faecal fistula developed due to patient's health condition. The patient was highly diabetic with high blood urea and creatinine levels. Further, OP (Doctor) had taken proper care of the fistula by providing regular dressing and antibiotics to the patient. The death occurred due to multiple factors. Thus there was no any negligence either during the appendectomy surgery or during treatment of faecal fistula. Therefore the appeal was dismissed.

#### Delivery of unhealthy child

**Singhal Maternity and Medical Centre, Uttar Pradesh and others v. Nishant Verma S/o Bijendra Singh Verma and others<sup>281</sup>**

**Facts:** Complainant No. 2 father of Complainant No. 1, who had taken his pregnant wife/Complainant No. 3 to OP No. 1 for ante-natal care and delivery

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<sup>281</sup> 2014 SCC OnLine NCDRC 10.

under OP No. 2 and After tests, Complainants No. 2 and 3 were informed that a normal delivery was expected. Complainant No. 3 faced extreme difficulty in conducting normal delivery and child was delivered unhealthy causing paralysis. That occurred because of the medical negligence and deficiency in service on the part of OP's at all stages of the medical treatment starting from the ante natal checks to neo natal care. Complainants confined their claim of compensation to Rs.1,00,00,000/- with interest @ 24% p.a. before State Commission. State Commission partly allowed the complaint and awarded compensation of Rs. 17,00,000/- .

**Issue:** Whether State Commission was justified in passing the impugned order?

**Decision:** Thus, it was clear that OP No. 2 did not adopt the practice of clinical observation and diagnosis including diagnostic tests in the case that would have been adopted by a doctor, alone as a specialist, and, therefore, she was clearly guilty of medical negligence. Commission have found OP Nos. 1 and 2 guilty of medical negligence on lesser counts than concluded by the State Commission, Commission was not inclined to interfere with the order of the State Commission, awarding compensation of Rs. 17,00,000/-, and confirmed the same Appeals disposed of.

#### Untimely diagnosis

**Rajiv Gandhi Cancer Institute and Research Centre, New Delhi and others v. Lt. Col (Rtd.) Zile Singh Dahiya S/o Devi Singh<sup>282</sup>**

**Facts:** Appellant/OP filed instant appeal challenging award of State Commission which allowed the complaint and awarded a lump sum compensation of Rs. 5 lakhs in favour of Complainant. Significantly, the return of the patient to Appellants/OPs on 16-10-2000. Yet, OPs chose to consider every test result as merely indicative/ suggestive of metastasis, needing further evaluation. There was no explanation why, significantly, the same reports allowed the Army Hospital, the Apollo Hospital and the Tata

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<sup>282</sup> MANU/CF/0198/2014.

Memorial Hospital, to reach a finding of metastasis, independently of each other. It could not be the case of anybody that time was not of the essence. But, the urgency was not reflected in the manner the case of deceased was handled by OPs. There was no explanation why the patient was not immediately admitted when she arrived on 16-10-2000. Thereafter, till the end of another two months the Cancer Institute had made no final diagnosis and therefore, had not commenced any treatment. Conduct of Appellants clearly falls below the standard of 'an ordinary competent person exercising ordinary skill in that profession.

**Issue:** Whether the resultant failure to reach a timely and clear diagnosis, with consequent failure to commence the requisite treatment, amounted to medical negligence or deficiency of service or not?

**Decision:** The commission in full agreement with the finding of the State Commission that the failure to provide proper diagnosis and treatment to the patient amounted to medical negligence. It was not unreasonable to expect that such an institution shall subject itself to appropriately higher standards of professional competence and care. Commission disagreed with the findings of the State Commission in so far as they relate to the Radical Hysterectomy performed on deceased at OP1/Cancer Institute in 1999. Findings of State Commission, to the extent they relate to the surgery performed at appellant No.1/Hospital in 1999, were set aside. Rest of the impugned order of the State Commission, was confirmed. Appeal partly allowed.

#### Reimbursement of medical bills

**District Project Coordinator and others v. Smt. Vidhya Devi W/o Late Sh. Yashwant Singh Yadav<sup>283</sup>**

**Facts:** The Complainant/Respondent Smt. Vidhya Devi wife of Late Yashwant Singh was working under Rajasthan Primary Education Council. Her husband was suffering from cancer; she got his treatment of cancer at Alwar, then at other private hospitals in New Delhi like AIIMS, Gangaram

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283 MANU/CF/0174/2014.

Hospital, and at Tata Memorial Hospital, Mumbai. And however he died on 13.12.2007. The Complainant submitted the bills of Rs. 5,24,675/- before the Opposite Parties for reimbursement. The OP denied for the payment of aforesaid medical bills on the ground that, the treatment was taken from private hospitals without proper permission from concerned authorities. Non reimbursement of aforesaid medical bills by the OPs amounts to deficiency in services. The Complainant approached District Consumer Disputes Redressal Forum with a prayer for reimbursement of Rs. 5,24,675/- along with costs and compensation towards mental agony. The District Forum awarded a sum of Rs. 5,24,675/- for reimbursement of medical bills on treatment of her deceased husband along with interest @12% p.a. from date of filing of the Complainant, An appeal filed against this order was dismissed by the State Commission. Hence this revision petition was filed before the National Commission.

**Decision:** The Commission held that the Cancer disease is fatal one and anxiety of family members is to prolong the life at the maximum extent. There was a provision for referral of cancer patient to Tata Memorial Hospital, Mumbai. The sympathy over the Complainant, who is a poor widow running from pillar to post since seven years. The claim of Complainant about the expenditure incurred and bills is genuine. Hence, the denial of reimbursement of medical bills is unjust and not proper on behalf of OPs and a deficiency in service. Accordingly, the revision petition was dismissed.

Leaving surgical instruments during body during surgery

**Jaswindher Singh and Anr.v. Santokh Nursing Home and Ors. Etc.<sup>284</sup>**

**Facts:** The Appellants had filed a complaint under Section 17 of the Consumer Protection Act, 1986 alleging medical negligence and deficiency in service on the part of the Respondents resulting in death of Smt. Ravinder Kaur, the wife of Appellant No. 1. They pleaded that she was admitted in Santokh Nursing Home on 8.6.2004 for removal of fibroid from her uterus as well as for total Hysterectomy where that she was operated upon by

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<sup>284</sup> (2012) 12 SCC 550.

Dr. Rashmi Jain (Respondent No. 3) and was discharged from the Nursing Home on 13.6.2004. On a subsequent visit it was discovered that two Mops/ Gauges measuring were left in her abdominal cavity, for which she was operated, but however succumbed to septicaemia.

The State Commission had concluded that Respondent No. 3 was guilty of gross negligence and she was liable to compensate the Appellants. Respondent Nos. 1 and 2 were also held vicariously liable. The Respondents were directed to pay an amount of Rs. 12,34,414.50/- with interest @ 6%. The National Commission accepted the decision of the State commission on the ground that the surgeon cannot abjure his overall responsibility on the ground that he is being assisted by a doctor, para-medic or nurse. The National Commission agreed with the decision of the State Commission but reduced compensation to Rs. 8,00,000/-.

**Issue:** Whether the National Commission had been right in reducing the amount of compensation on the ground that the deceased was a house wife?

**Decision:** The Supreme Court rejected the contention holding that merely on the ground that deceased was a home maker and was not performing economic activity was not a valid ground. The Respondents were thus directed to repay the balance amount.

exceeding limitation period

**O. K. Gaur S/o Late B. R. Gaur v. Choithram Hospital and Research Centre<sup>285</sup>**

**Facts:** Appellant's case is that he suffered from polycystic kidney disease, one of his kidneys was removed, and as the second one also started deteriorating, he was advised kidney transplant. Respondent's Hospital is the only hospital in the state authorized to conduct kidney transplant surgeries. Along with donor, Appellant was admitted to Respondent's hospital for 6 days. Various tests were conducted and large amount of money was extorted from him for these tests. When Appellant was admitted in August 2005 for

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<sup>285</sup> 2012 SCC OnLine NCDRC 114.

transplant, the tests were again repeated and the transplant was purposely delayed to obtain more money from him. Lastly at the time of discharge the discharge certificate was not given and hence he was forced to only go to the said hospital.

Respondent filed the case before state commission on 9.2.08 before the State Commission seeking Rs. 30 lakh compensation and 15 lakh towards consumer welfare fund. Since the complaint was filed 3 years after the operation, the case was challenged as time barred.

**Issue:** Whether there can be award of compensation?

**Decision:** Court held the Act clearly provides the aspect of limitation to be peremptory in nature and has to be seen at the time of filing of the complaint. In the present case since the period was beyond 2 years without any acceptable reason for delay the case is barred limitation. A cause of action does not arise at the date of service of legal notice as argued by the Respondent.

On merits as well the case was dismissed as Kidney transplant, according to the provisions of the transplant of Human Organ Act, 1994 no transplantation can be done without the authority of law. The M.P. State Government had given permission on 15.7.05 but the Respondent only came on 8.8.05, transplantation being a serious surgery cannot be done in haste. On the second count on whether the HLA test was done twice and the same was not required, there was no proof that it was done twice, and even if it was, it was done in the interest of the patient; the hospital could not be faulted for abundant caution. And lastly on the point of issue of discharge summary, if the hospital had not provided the same then the respondent would not have taken 3 years to file the case, the appeal was therefore dismissed.

Difference between criminal and civil negligence

**Srimannarayana v. Dasari Santakumari and another<sup>286</sup>**

**Facts:** “To prosecute medical professional for negligence under criminal law there must be negligence on the part of doctors”. The Appellant and

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<sup>286</sup> (2013) 9 SCC 496.

Respondent No. 2, who are doctors, conducted an operation on the left leg of the husband of the Complainant. Sometime after the operation, the patient died on 13.07.2008. Respondent No. 1, wife of the deceased, filed a complaint against the Appellant and Respondent No. 2, before the District Consumer Forum. We may notice here that Respondent No. 2 is the Appellant in Civil Appeal No. 369 of 2013 arising out of SLP (C) No. 1495 of 2011. The complaint was duly registered and notice was issued to the Appellant and Respondent No. 2. Against the issuance of the notice, the Appellant filed a revision petition before the State Consumer Disputes Redressal Commission, Hyderabad on the ground that the complaint could not have been registered by the District Forum without seeking an opinion of an expert in terms of the decision of the Supreme Court reportrayed application before the District Forum to refer the matter to an expert. He did not file any application before the District Forum, but challenged the aforesaid order of the State Commission by filing revision petition No. 2032 of 2010 before the National Commission. The revision petition has been dismissed by the National Commission by relying upon the subsequent judgment of this Court in *V. Kishan Rao v. Nikhil Super Speciality Hospital and Anr*, wherein this Court has declared that the judgment rendered in Martin F. D'Souza is per incuriam. Hence the present special leave petitions challenging the aforesaid order of the National Commission dated 15.07.2010.

**Issues:** Whether civil negligence is same as that of criminal negligence?

**Decision:** Hon'ble Supreme Court conceptualize that the jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mensrea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

Apex court further clears that to prosecute a medical professional for negligence under criminal law it must be shown that the accused did

something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.” Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of mensrea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the Complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the lifesaving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society.” In view of the above, Apex Court was of the opinion that the conclusions recorded by the National Commission

in the impugned order do not call for any interference. The civil appeals are dismissed.

Improper amputation

**Minor Margesh K. Parikh v. Dr. Mayur H. Mehta<sup>287</sup>**

**Facts:** The Appellant was admitted in the hospital of the Respondent on 31.10.1994 with the complaint of loose motions. After some laboratory tests, the Respondent put him on medication and also injected glucose saline through his right shoulder. This did not improve the condition of the Appellant, who started vomiting and having loose motions frequently. On 3.11.1994, the Respondent is said to have administered glucose saline through the left foot of the Appellant. In the evening, the parents of the Appellant noticed swelling in the toe of his left foot, which was turning black. This was brought to the notice of the Respondent, who stopped the glucose. On the next day, the parents of the Appellant pointed out to the Respondent that blackish discolouration had spread. Thereupon, the appellant was sent to one Dr. Chudasama, who was known to the Respondent. Dr. Chudasama applied a small cut, removed black coloured fluid from the left toe of the Appellant and gave some medicines. In the morning of 5.11.1994, it was noticed that the left leg of the Appellant had become totally black up to the knee. Thereupon, he was taken to Vadodara. Dr. Ashwin Bhamar, who examined the Appellant at Vadodara suspected that he had developed gangrene in his left leg and advised his admission in Bhailal Amin Hospital. The Appellant was operated in that hospital and his left leg was amputated below the knee.

**Issue:** Whether it amounts to negligence by doctors?

**Decision:** The impugned order is set aside and the matter is remanded to the National Commission for fresh disposal of the appeal filed by the Respondent. Since, the matter is almost 16 years old, the Hon'ble Supreme Court request the National Commission to decide the appeal within a period of 6 months from the date of receipt/production of copy of this judgment. The parties are directed to appear before the National Commission on the

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<sup>287</sup> AIR 2011 SC 249.

said date. They may file additional affidavits and documents within next four weeks.

Consumer negligent about their rights

**Dr. V.N. Shrikhande v. Mrs. Anita Sena Fernandes<sup>288</sup>**

**Facts:** The Respondent was employed as a Nurse in Government Hospital, Goa. In 1993, she complained of pain in abdomen. The doctors in Goa advised her to consult the Appellant, who was having a hospital at Dadar, Mumbai. After examining the report of the pathologist, which revealed that the Respondent had stones in her gall bladder, the Appellant performed 'Open Cholecystectomy' on 26.11.1993. For the next about 9 years, the Respondent neither contacted the Appellant nor consulted any other doctor despite the fact that after the surgery she was having pain in the abdomen off and on, for which she was taking painkillers and she had to remain on leave at regular intervals. In September, 2002, the Respondent was admitted in the hospital and C.T. scan of her abdomen was done on 23.9.2002, which revealed that the gauze was left in her abdomen while doing surgery.

**Issue:** Whether there can be claim for compensation after the 9 years of surgery?

**Decision:** The Supreme Court, in a claim for compensation filed after 9 years of surgery held that "In case of Medical Negligence 'Cause of action' does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence." The decision of the court sends a strong message against frivolous litigation and complainant sleeping over their rights.

Consent given by relative of patient

**Surendra Kumar Tyagi S/o Trilok Chand Tyagi Ghaziabad v. Jagat Nursing Home and Hospital, Meerut and another.<sup>289</sup>**

**Decision:** The National Commission has held that in cases of medical negligence and deficiency in service, in treatment of a patient, damages are

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288 AIR 2011 SC 212.

289 2010 SCC OnLine NCDRC 267.

to be quantified under two heads -pecuniary and non-pecuniary damages. Under the first head, will be those damages, which can be quantified in terms of money i.e. actual expenditure incurred by the patient Complainant in getting the treatment or in the rectification of the deficient treatment, which he received as also for the resultant loss of business, etc. The non-pecuniary damages would be for the physical and mental pain and sufferings of the patient Complainant on account of such faulty treatment.

**Samira Kohli v. Prabha Manchanda<sup>290</sup>**

**Facts:** The Complainant alleged that consent had been given for diagnostic surgery, but the doctor had removed her uterus and ovaries on such consent.

**Issue:** Whether the consent given by the patients relative for the surgery be valid?

**Decision:** The Supreme Court held that additional procedures, which were outside the scope of the consent given, can be carried out by doctor only when delay would cause imminent danger to life/health of patient (the principle of necessity). Further, the consent given by the patient's relative could not be considered to be valid and real consent when patient is a competent adult, as there was no medical emergency and matter was only at stage of diagnosis. The correctness or appropriateness of the treatment procedures does not make treatment legal when there is lack of consent.

Prescription of allopathic medicines

**Azizul Haq Khan v. Shyamapati.<sup>291</sup>**

The Complainant alleged that the Opposite Party, who was a Unani doctor, had prescribed her with allopathic medicines without advising her or requiring her to undergo any diagnostic tests and as a result of the negligence, she had to undergo amputation. The National Commission found that the Opposite Party was competent to prescribe allopathic medicines, but he had been negligent as he had not recorded a proper prescription of the symptoms of

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290 AIR 2008 SC 1385.

291 II (2009) CPJ 49 (NC).

the Complainant, he had not required her to undergo any tests, he had failed to diagnose the Complainant correctly and he had prescribed a cocktail of drugs to her.

**Bhanwar Kanwar v. R. K. Gupta.<sup>292</sup>**

**Facts:** The Complainant alleged that the Opposite Party had represented to him that he could treat his son using ayurvedic medicines, and he had issued several advertisements in this regard. After being treated by the Opposite Party, the condition of the Complainant's son worsened and a doctor opined that he could never grow to be a normal child as the drugs given to him were allopathic medicines which were not to be given to children.

**Issue:** Whether or not the doctor was negligent on his part?

**Decision:** The Commission held that the acts of the Opposite Party amounted to unfair trade practices and ordered him to pay compensation.

Administering a broad spectrum drug

**Martin F. D'Souza v. Mohammad Ishfaq<sup>293</sup>**

**Facts:** The patient who was suffering from chronic renal failure by the Director, Health Services to the Nanavati Hospital, Mumbai for the purpose of a kidney transplant. On or about 24.4.1991, the Respondent reached Nanavati Hospital, Bombay and was under the treatment of the Appellant Doctor. At that stage, the Respondent was undergoing haemodialysis twice a week on account of chronic renal failure. Investigations were underway to find a suitable donor. The patient wanted to be operated by Dr. Sonawala alone who was out of India from 1.6.1991 to 1.7.1991. The patient approached the Appellant Doctor. At the time, the patient, who was suffering from high fever, did not want to be admitted to the Hospital despite the advice of the Doctor. Hence, a broad spectrum antibiotic was prescribed to him. The reports of the urine culture and sensitivity were received. The

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292 (2013) 4 SCC 252.

293 AIR2009SC2049.

report showed severe urinary tract infection due to Klebsiella species (1 lac/ml). The report also showed that the infection could be treated by Amikacin and Methenamine Mandelate and that the infection was resistant to other antibiotics. Methenamine Mandelate cannot be used in patients suffering from renal failure. The patient got his kidney transplanted from some other hospital as the Appellant hospital was not ready to do since he had urinal tract infection. The patient after his discharge filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi (being Original Petition No. 178 of 1992) claiming compensation of an amount of Rs. 12,00,000/- as his hearing had been affected (which was not brought into the picture of appellant doctor).

**Issue:** Whether the drug administered by the doctor was wrong?

**Decision:** The Supreme Court relied on several of its previous decisions. AIIMS nominated Dr. P. Ghosh, and the report of Dr. P. Ghosh of the All India Institute of Medical Sciences was submitted before the Commission, after examining the Respondent. Dr. Ghosh was of the opinion that the drug Amikacin was administered by the Appellant as a life saving measure and was rightly used. It is submitted by the Appellant that the said report further makes it clear that there has been no negligence on the part of the Appellant.

The test for affixing medical negligence was the standard of the ordinary skilled doctor exercising a special skill, but not the highest expert skill. As long as a doctor performed his duty with reasonable care, he could not be held liable even if the treatment was unsuccessful. Since different doctors had different approaches, the mere fact that one of the approaches was adopted could not be a ground for medical negligence. Also, since courts were not experts in medicine, they should not substitute their own views over those of the specialists; they should refer the matter to a committee of doctors and only when they report that there is a *prima facie* case of negligence should the court continue with the matter.

Alternative method of surgery

**P. Sreekumar (Dr.) v. S. Ramanujan<sup>294</sup>**

**Facts:** The Appellant performed a hemiarthroplasty on the Complainant instead of internal fixation procedure, which the Complainant contended was unnecessary.

**Issue:** Whether the surgery conducted by the doctor amounts to the negligence on his part?

**Decision:** The Court held that both the procedures were prescribed by medical textbooks, and just because the doctor chose one of them could not be the basis for a claim of professional negligence.

Implied consent

**Medical Sciences v. Prasanth S. Dhananka<sup>295</sup>**

**Facts:** The Complainant underwent surgery for excision of tumour, but it resulted in complete paralysis, where the consent was only given for the biopsy and not for the surgery.

**Issue:** Whether the consent for particular treatment can be implied as consent for surgery?

**Decision:** The National Commission found that there was no informed consent for the surgery and that consent for a biopsy could not be considered to be implied consent for the main surgery. The Complainant appealed for enhancement of compensation which was granted by the Supreme Court. It held that a patient had a right to decide whether he should undergo a particular treatment, and the requirement of consent could only be done away with in the case of an emergency. The Supreme Court finally awarded Rs. One Crore with 6% Interest.

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294 (2009) 7 SCC 130.

295 2009(6) SCC 1.

**Nizam Institute of Medical Sciences v. Prasanth S. Dhananka.<sup>296</sup>**

**Facts:** The Complainant underwent surgery for excision of tumour, but it resulted in complete paralysis. The National Commission found that there was no informed consent for the surgery and that consent for a biopsy could not be considered to be implied consent for the main surgery. The Complainant appealed for enhancement of compensation which was granted by the Supreme Court. It held that a patient had a right to decide whether he should undergo a particular treatment, and the requirement of consent could only be done away with in the case of an emergency.

**Decision:** The Supreme Court finally awarded Rs. One Core with 6% Interest?

Negligence in performing operation

**V. Krishnakumar v. State of Tamil Nadu and Ors.<sup>297</sup>**

**Facts:** The Appellant's wife gave premature birth to a girl in the government hospital. The treatment was administered at Appellant's home. The only advice given to the Appellant by the doctors was to keep the daughter isolated and confined to the sterile room to protect her from infection. The doctors didn't suggest the check-up for Retinopathy of Prematurity (ROP) which was their duty which was discovered after over 4 months of birth by a paediatrician. Subsequent examinations determined ROP was at its terminal stage and the Appellant's daughter was blind. The Appellant incurred enormous expenses for surgery in the United States but to no avail.

**Issue:** Whether Respondents are liable for the medical negligence as it was the duty of doctors to suggest the check-up for ROP?

**Decision:** It was ruled that the aggrieved person should get that sum of money, which would put him in the same position if he had not sustained the wrong. It must result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the

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296 The Constitution (Eighty-Sixth Amendment) Act, 2002.

297 AIR 2015 SC 2836.

event. The inflation should be taken into account when awarding compensation. It was settled that the hospital is vicariously liable for the acts of its doctors.

**S.K. Jhunjhunwala v. Dhanwanti Kumar and Ors.<sup>298</sup>**

**Facts:** The Appellant was a practising doctor since 1969 and is qualified surgeon having expertise, especially in gall bladder surgery. He was a visiting consultant to several Hospital out of which the Life Line Diagnostic Center and Nursing Home, Calcutta (respondent No. 2). The Respondent No. 1 i.e., Dhanwanti Kumar a resident of Calcutta had a pain in her Abdomen consulted the local doctor but she did not get any relief. Then she consulted Dr. Lakshmi Basu who on examination, advised her to go various medical test. On examination of the report of the medical test, opined that her Gall Bladder had two calculi in its lumen and the same could be cured only by operation. Dr. Basu advised her to undergo laparoscopic surgery from any good surgeon and suggested the Appellant. On advice of the same she consulted Appellant Dr. S. K. Jhunjhunwala, and he advised to get herself admitted in Respondent No. 2's Hospital for undergoing surgery. The Respondent No. 1 got herself admitted and the Appellant performed the laparoscopy and open surgery and removed the Gall Bladder. Thereafter she was in the Hospital for about a week and discharged. The Appellant denying the allegations contended that he after examining advised her to go for surgery of Gall Bladder, which may even include removal of Gall Bladder and also the Appellant stated that after starting laparoscopic surgery, he noticed swelling, inflammation and adhesion on her Gall Bladder and, therefore, he came out of the Operation Theatre and disclosed these facts to Respondent No. 1's husband and told him only conventional procedure of surgery is the option to remove the malady. The husband of Respondent No. 1 agreed for the option suggested by the Appellant and the Appellant accordingly performed conventional surgery and also denied the allegations of any kind of negligence or carelessness or inefficiency in performing the surgery on Respondent No. 1 and stated that all kinds of precautions to the best of his

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<sup>298</sup> AIR 2018 SC 4625.

ability and capacity, which were necessary to perform the surgery were taken by him and by the team of doctors. The Respondent No. 1 on December 1997 filed a complaint u/sec. 10 of the Consumer Protection Act, 1986 against the Appellant and Respondent No. 2 claiming compensation for the loss, mental suffering and pain suffered by her throughout after the surgery on account of negligence of the Appellant in performing the surgery of her Gall Bladder, on the grounds that she had never given her consent for performing general Surgery of her Gall Bladder rather she had given consent for performing laparoscopy Surgery only. The State Commission dismissed the complaint filed by the Respondent No.1 finding no merits in the case on the basis of the adduced evidence of the parties in support of their respective cases set up in their pleadings. Aggrieved by the order of Respondent approached the National Commission. The National Commission allowed the appeal filed by the Respondent No.1 in part and awarded a total Compensation of Rs. 2 lakhs to be paid by the Appellant to Respondent No.1 on account of Negligence on the part of petitioner. Aggrieved by the same Petitioner approached Hon'ble Supreme Court by way of Special Leave Petition.

**Issue:** Whether the Appellant is Negligent or is carelessness or inefficiency in performing the surgery?

**Decision:** The Supreme court observed that no medical evidence of any expert was adduced by the Respondent No.1 to prove any specific kind of negligence on the part of the Appellant in performing the surgery of Gall Blader excep raising the issue of 'non-giving of express consent.' The court said that the suffering of ailment by the patient after surgery is one thing. It may be due to myriad reasons known in medical jurisprudence. Whereas suffering of any such ailment as a result of improper performance of the surgery and that too with the degree of negligence on the part of Doctor is another thing. It also further said that to prove the case of negligence of a doctor, the medical evidence of experts is required. Hence, the impugned order was set aside and the order passed by the State Commission was restored.

Whether Complainant is a consumer under the Consumer Protection Act, 1986

**Parveen Sharma v. Anne Heart And Medical Centre And Others<sup>299</sup>**

**Facts:** The Complainant was declared successful in written examination for the post of Sub Inspector. He also qualified physical test and was to undergo echo cardiography test in Opposite Party no.3 that is hospital and OP3 advised him to get test done from PGI but Department of PGI had closed, Opposite Party No. 3 directed- petitioner to get tests done from Opposite Party No. 1 & 2/Respondent No. 1 & 2. The test was conducted and as per report, there was 3 mm Patent Foramen Ovale- hole in the heart. On the basis of this report, he was declared medically unfit. Again Complainant approached PGIMER and got echo cardiography test done and as per report there was no hole in the heart. Complainant again approached the Selection Committee but with no result. Complainant filed writ before Hon'ble Punjab & Haryana High Court and Hon'ble High Court directed that Complainant be examined by a Review Medical Board. Review Medical Board examined the Complainant and found him medically fit and he again appeared for interview but as there were only three posts in general category, he was not selected. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before District Forum. Opposite Party No. 1 & 2 resisted complaint and submitted that test report given by them was perfectly correct. It was further alleged that Complainant suppressed test report of TTE, test advised by the PGI and also did not place report of the Review Medical Board and prayed for dismissal of complaint. Opposite Party No. 3 resisted complaint and submitted that as services were provided free of charge, Complainant is not a 'consumer'. It was, further, submitted that neither Complainant was examined by Opposite Party No. 3 nor referred by Opposite Party No. 3 to Opposite Party No. 1 & 2 but after obtaining report by the Complainant from Opposite Party No. 1, he visited Opposite Party No. 3 and on his request the Reader of Department of Medicine, just endorsed the same report but never declared Complainant unfit and prayed for dismissal

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<sup>299</sup> 2015 SCC OnLine NCDRC 1190.

of complaint. Learned District Forum after hearing both the parties allowed Complainant and directed Opposite Party No. 1 & 2 to pay Rs. 2,00,000/- and Opposite Party No. 3 to pay Rs. 1 lakh to the Complainant and further directed to pay Rs. 2,500/- as litigation cost. All the parties preferred appeals against order of District Forum before the State Commission and Learned State Commission vide impugned order allowed appeals of Opposite Parties but dismissed appeal of Complainant and set aside order of the District Forum and dismissed complaint against which this revision petition has been filed.”

**Issue:** Whether the Complainant was a consumer under the definition of Consumer Protection Act, 1986 and whether there was deficiency in service on the part of the Opposite Party?

**Decision:** The Commission held that the Complainant was not a consumer under the definition of the consumer in Consumer Protection Act, 1986. The counsel for the Opposite Party 3 argued that the services were provided free of cost hence he does not fall within the purview of ‘consumer’. Further the Complainant could not provide proof for the charges if any he had paid. As the Complainant could not provide the report of Review Medical Board to the commission hence, I cannot be inferred that any wrong report was given by Opposite Party no. 1 and 2. Hence the commission upheld the decision of state commission.”

**Chief Executive Officer, Zilla Parishad v. Sagunabai Navalsing Chavan.**<sup>300</sup>

**Facts:** The Complainant underwent a tubectomy operation by a medical officer of the Zilla Parishad hospital, but thereafter, she became pregnant. She filed a complaint alleging negligence.

**Issue:** Whether or not the Complainant falls under the definition of “consumer”?

**Decision:** The Commission held that she was not a consumer as per the definition under the Consumer Protection Act as the operation was performed

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<sup>300</sup> MANU/CF/0457/2008.

free of charge. Further, it also recognized that there was a possibility of failure of sterilization in some cases owing to re-canalization by natural causes.

Whether treatment given is a standard practice

**Handa Nursing Home And Ors. v. Ram Kali,<sup>301</sup>**

**Facts:** Ramkali felt some pain in the right side of her abdomen and was taken to Dr. Madan Jain who referred her to Dr. Saroj Singla for ultrasound. The ultrasound report was shown to Dr. Madan Jain and Dr. Jain referred the case to Handa Nursing Home, OP/Petitioner. On seeing the ultrasound report, Dr. A.K. Handa diagnosed it as right ureteric stone and therefore, advised operation through Laser Technology. Consequently, she was operated upon and was discharged from the Nursing Home, though Complainant was suffering from pain but Dr. Handa informed the family members of the Complainant-Ramkali that the operation had been successful, and the stone had been broken and DJ Stent had been inserted which was to be removed after one week and the complainant could be taken to home. Complainant-Ramkali paid Rs. 14,000 to Handa Nursing Home. After one week the Stent was removed yet the Complainant/Ramkali kept complaining pain and temperature. She was readmitted to Nursing Home i.e. OP/Petitioner. On the advice of Dr. Handa, once again the stent was inserted in the right side of the abdomen and Complainant - Ramkali was discharged. The stent was removed after 10 days, medicines were changed but despite this, the condition of the Complainant/Ramkali did not improve and the pain & temperature continued. The condition of the Complainant further deteriorated and was admitted to AIIMS. She was put to dialysis and hemo-dialysis couple of times. The Complainant/Respondent was completely bedridden and unable to support herself on her own. Alleging deficiency on the part of Opposite parties/Petitioners, Complainant filed complaint before District Forum. Opposite Parties/ Petitioners resisted complaint and denied the allegations and submitted that the treatment given was nowhere stated to be wrong by the doctors of the AIIMS; therefore, there was no negligence in administrating

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301 MANU / CF/0138/2015.

the treatment to the Complainant by the doctors. Learned District Forum after hearing both the parties allowed complaint and directed Opposite Party to pay Rs. 7 lakh as compensation including cost of litigation to the Complainant.”

**Issue:** Whether the treatment given by the Petitioner was a standard practice or not?

**Decision:** According to a report of the Medical Board constituted by the Medical Supdt., AIIMS, which consists of six members the treatment given was as per standard practice. The treatment administered was as per standard procedure. The expert committee indicated that the tests would have been advisable prior to the operative intervention but nowhere mentioned that without these tests Petitioner committed deficiency in giving treatment to Ramkali. Consequently the revision petition filed by the Petitioner was allowed and order passed by State Commission was set aside.

## **POSTAL SECTOR**

The postal sector in India has been incurring losses ever since the rise of electronic forms of communication. From a deficit of Rs. 6,007/- crore in 2016, the deficit has grown to Rs. 15,000/- crore in 2019.<sup>302</sup> Despite these losses, it provides a valuable service to many people – the postal savings bank account, national savings certificate, postal life insurance, payment of bills, time deposits, couriers and letters etc.<sup>303</sup>

### **CONSUMER ISSUES**

The consumer problems with the postal sector are as follows<sup>304</sup>:

1. Inordinate and unjustified delays in delivery of goods.
2. Loss or damage to goods.
3. Lack of competent staff.
4. Lack of information about the working of postal sector and services provided.
5. Lack of proper grievance redressal.

### **DEPARTMENT OF POSTS**

While there is no independent regulatory body for the postal sector, the Department of Posts has rolled out several initiatives for addressing consumer grievances:

- 302 India Post losses touch Rs 15,000 crore in FY19, replaces Air India, BSNL as biggest loss-making PSU' *Business Today* (15 April 2019) <<https://www.businessstoday.in/sectors/psu/india-post-losses-touch-rs-15000-crore-in-fy19-replaces-air-india-bsnl-as-biggest-loss-making-psu/story/337470.html>> accessed 14 July 2019.
- 303 Department of Posts, 'Working Group Report: Twelfth Plan 2012-2017' 10 <[http://planningcommission.nic.in/aboutus/committee/wrkgrp12/cit/wg\\_repost.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/cit/wg_repost.pdf)> accessed 14 July 2019.
- 304 Charusheela Birajdar and Akshata Joshi, 'A Review of Customer Satisfaction for Indian Postal Services' [2016] 7(3) IJMHRM 49, 55.

1. India Post launched a new toll free helpline for consumers to register their grievances. It is available to all users and can be accessed through mobile and landline.<sup>305</sup>
2. The Centralized Public Grievance Redress and Monitoring System (CPGRAMS) is an online platform which allows consumers to submit their complaints at any time which are later reviewed by Ministries/ Departments/Organisations for redressal.<sup>306</sup>
3. The Department of Posts lays out the guidelines for registration of complaints and tracking of complaints on its website.<sup>307</sup>

## CASES

### Condonation of delay in filing application

#### **Post Master, Deesa Post Office & Anr. v. Parvatiben Arjanbhai Prajapati & Anr.**<sup>308</sup>

**Facts:** The Complainants had opened the opened recurring deposit accounts with Deesa Post Office at Deesa in District Banaskantha of Gujarat. They made deposits in the said accounts from time to time. Their grievance is that the money which they had deposited in the recurring accounts were illegally withdrawn, in connivance with postal employees, on the basis of forged documents and later the accounts which they had opened in the postal office were also closed by the he postal employees and some postal agents. On coming to know of the said acts on the part of the postal employees and postal agents, they lodged FIR with the concerned Police Station and also filed Consumer Complaints against the petitioners seeking payment of the

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305 Kshitiz Goliya, 'India Post launches toll-free grievance helpline' *LiveMint* (New Delhi, 12 September 2016) <<https://www.livemint.com/Politics/fIjrVoaQPWL5dZM9KT8yAM/India-Post-launches-tollfree-grievance-helpline.html>> accessed 14 July 2019.

306 Centralized Public Grievance Redress And Monitoring System <<https://www.pgportal.gov.in/>> accessed 14 July 2019.

307 'Guidelines for Registration of Complaints' <<https://www.indiapost.gov.in/VAS/Pages/CustomerSupport/Guidelines-on-Complaints.aspx>> accessed 14 July 2019.

308 Revision Petition No. 2819/2018 (NCDRC).

amount which they had deposited with the said Post Office along with compensation before the District Commission. The District Commission directed the authority to refund the amount in their respective accounts with interest @ 9% per annum. Being aggrieved by the said order the Petitioner approached the State Commission by way of appeal. The said appeal having been dismissed the Petitioners are before this Commission by way of Revision Petition and application for the condonation of Delay as the order of the State Commission passed on 12/09/2017 and the revision petition have been filed on 05/10/2018 i.e more than 1 year after the said order. The delay in filling the revision petition is that the Petitioners sought legal opinion from the ACGSC Ahmedabad on 11.10.2017 whether to assail the impugned order/judgment or not thereafter on the directions of the Department of Posts, Ministry of Communication, the branch secretariat send the legal opinion to file a revision petition then the requisite documents were referred to the Directorate, INV for further necessary action on 19.01.2018/ 12.02.2018 and was again reminded on 28.03.2018 over a period of time the circle officer vide letter no. INV/Misc-Corr/2018 dated 25.05.2018 directed the Department of Posts, Ministry of Communication to file an appeal thereby challenging the said impugned order dated 12. 09.2017 and that the above said delay in filing revision petition occurred due to the administrative procedures and is neither intentional or deliberate.

**Issue:** Whether application filed for the condonation of delay is allowed?

**Decision:** The National Commission on observing the purpose behind enactment of the Consumer Protection Act i.e. to provide an expeditious remedy to the consumers who are aggrieved on account of any defect or deficiency in the goods purchased or services hired or availed by him as the case may be and to endeavour to decide a Consumer Complaint within a period of three month. The above application for the condonation of the delay betray total lack of coordination and gross negligence in pursuing the matter, which has resulted in delay of more than eight months in filing the revision petition. In fact, it has taken the Petitioners almost one year to file these petitions after receiving the copy of the impugned order on 09.10. 2017. The petitioner had also failed to give explanation as to how the hard-

earned money which the Complainants had deposited with the Post Office, came to be released. Therefore, the facts and circumstances of the matters also do not justify interference by this Commission in exercise of its revisional jurisdiction at such a belated stage. Hence application for condonation of delay is dismissed. Consequently, the revision petition is dismissed as barred by limitation.

**U. T. Chandigarh Administration & Another v. Amarjeet Singh & Others<sup>309</sup>**

**Facts:** The Complainants had opened the opened recurring deposit accounts with Deesa Post Office at Deesa in District Banaskantha of Gujarat. They made deposits in the said accounts from time to time. Their grievance is that the money which they had deposited in the recurring accounts were illegally withdrawn, in connivance with postal employees, on the basis of forged documents and later the accounts which they had opened in the postal office were also closed by the he postal employees and some postal agents On coming to know of the said acts on the part of the postal employees and postal agents, they lodged FIR with the concerned Police Station and also filed Consumer Complaints against the Petitioners seeking payment of the amount which they had deposited with the said Post Office along with compensation before the District Commission.

The District Commission directed the authority to refund the amount in their respective accounts with interest @ 9% per annum. Being aggrieved by the said order the Petitioner approached the State Commission by way of appeal. The said appeal having been dismissed the Petitioners are before this Commission by way of Revision Petition and application for the condonation of Delay as the order of the State Commission passed on 12/09/2017 and the revision petition have been filed on 05/10/2018 i.e more than 1 year after the said order. The delay in filling the revision petition is that the Petitioners sought legal opinion from the ACGSC Ahmedabad on 11.10.2017 whether to assail the impugned order/judgment or not thereafter on the directions of the Department of Posts, Ministry of Communication, the branch secretariat send the legal opinion to file a revision petition then the requisite

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<sup>309</sup> AIR 2009 SC 1607.

documents were referred to the Directorate, INV for further necessary action on 19.01.2018/12.02.2018 and was again reminded on 28.03.2018 over a period of time the circle officer vide letter no. INV/Misc-Corr/2018 dated 25.05.2018 directed the Department of Posts, Ministry of Communication to file an appeal thereby challenging the said impugned order dated 12.09.2017 and that the above said delay in filing revision petition occurred due to the administrative procedures and is neither intentional or deliberate.

**Issue:** Whether application filed for the condonation of delay is allowed?

**Decision:** The National Commission on observing the purpose behind enactment of the Consumer Protection Act i.e. to provide an expeditious remedy to the consumers who are aggrieved on account of any defect or deficiency in the goods purchased or services hired or availed by him as the case may be and to endeavour to decide a Consumer Complaint within a period of three month. The above application for the condonation of the delay betray total lack of coordination and gross negligence in pursuing the matter, which has resulted in delay of more than eight months in filing the revision petition. In fact, it has taken the Petitioners almost one year to file these petitions after receiving the copy of the impugned order on 09.10. 2017. The Petitioner had also failed to give explanation as to how the hard earned money which the Complainants had deposited with the Post Office, came to be released. Therefore, the facts and circumstances of the matters also do not justify interference by this Commission in exercise of its revisional jurisdiction at such a belated stage. Hence application for condonation of delay is dismissed. Consequently the revision petition is dismissed as barred by limitation.

Delivery of medicine packet in a tampered condition

**Post Master, Manimajra Post Office v. Ripan Kumar<sup>310</sup>**

**Facts:** The Respondent through speed post, sent a packet containing medicines worth Rs. 29,042/-, from Chandigarh to M/s. Critical Drugs Agency, Imphal, Manipur, on 04.06.2015. It reached Imphal, in a damaged

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310 MANU/CF/0027/2020.

condition. The agency aforesaid, to whom the medicines were sent, was intimated by the Postal Authorities to come to its office and check the goods. It was found that medicines ordered were damaged and some were also missing. The Postal Authorities in Imphal, sent a representative to the said Agency, stating that packet was found in a tampered condition. A request was made to accept the delivery. However, the said Agency refused to do so. The tampered packet was sent back to Chandigarh Post Office and was ultimately returned to the respondent. The Complainant filed a complaint before the he District Forum for loss and injury due to deficiency in service on the part of the Postal Department. The District Forum partly allowed the complaint and directed the Opposite Party to pay Rs. 49,042/- to the Complainant towards the value goods, Compensation and cost of litigation. The postal department filed an appeal before the state commission which dismissed the appeal. Being aggrieved by the same the Postal Department filed the revision petition before the National Consumer Dispute Redressal Commission.

**Issue:** Whether there is deficiency in service on part of Postal Department in making delivery of medicine packet in a tampered condition?

**Decision:** NCDRC held that Postal Department adduced no evidence before forum of original jurisdiction i.e. District Forum, or made any averment or assertion in its appeal before State Commission or in its memo of petition before this Commission, in respect of having conducted any inquiry or fact finding to ascertain whether or not delay in delivery was caused “fraudulently” or by “willful act or default” by its concerned officials. It believes reason that “fraudulently” or by “willful act or default” is summarily ruled out, without any inquiry or fact finding, and exemption provided under Section 6 of Act 1898 is straightaway adduced in defense. If that has to be so, each and every “loss, misdelivery, delay or damage” has necessarily to be presumed to not having been caused “fraudulently” or by “willful act or default” by officials of Postal Department -Section 6 of Act 1898 does not intend to provide an unfettered license to officials of Postal Department for inefficiency and mismanagement or to cause loss and injury to its ‘consumer’(s). Onus to establish that protection of Section 6 of Act 1898 can be taken in given

facts and circumstances of a particular case is on Postal Department, which onus it has not discharged in this case. And this has to be seen in conjunction with deficiency in service under Act 1986, which is writ large in facts and circumstances of this case. With above discussion, Revision Petition, being patently misconceived and totally devoid of merit, is dismissed, with advice to inculcate systemic improvements and imbibe responsibility and accountability, and with Cost of Rs. 1 lakh to be deposited in Consumer Legal Aid Account of District Forum by Postal Department within four weeks of pronouncement of this Order. Award made by District Forum and as upheld by State Commission is confirmed. It will be open to Postal Department to recover Award and Cost from its concerned officials responsible, after adopting due process.

Incorrect deposition of money with post master

**Arulmighu Dhandayudhapani swamy Thirukoil, Palani v. The Director General of Post Offices<sup>311</sup>**

**Facts:** Appellant deposited substantial amount with 3rd Respondent/post master under ‘Post Office Time Deposit Scheme’ which had been discontinued vide Government Notification, therefore amount deposited was refunded without interest. National Commission dismissed Appeal and confirmed order of State Commission which dismissed complaint alleging deficiency in service and claim of interest. Challenge against dismissal of appeal was preferred in the S.C. Question raised that whether there was deficiency in service on the part of Post Master, third Respondent and whether Appellant complainant entitled to any relief by way of interests. Court held that, in view of communication by 3<sup>rd</sup> Respondent and Rule 17, failure to pay interest cannot be construed as deficiency in service in terms of Section 2(1)(g) of the Act. Respondents justified in declining to pay interest for deposited amount since same was not permissible in terms of Rule 17 though 3rd Respondent was ignorant of Notification discontinuing scheme but, Respondents cannot be fastened for deficiency in service in terms of law or contract and appeal was dismissed.

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<sup>311</sup> AIR 2011 SC 2604.

Liability of telegraph officers

**Head Postmaster, Ponnai, Kerala v. V. Ayyapan<sup>312</sup>**

**Facts:** The Complainant alleged that he could not perform the last rites of his son because the telegram sent by the hospital reached late, and by that time, his son had already been buried in the municipal burial ground.

**Decision:** The National Commission did not allow the Post Office to take the defence of Section 9 of the Telegraph Act, which absolved the Government of any liability of an individual telegraph officer failing to do his duty, holding that the Post Office was guilty of deficiency in service.

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<sup>312</sup> MANU / CF/ 0304/2009.

## **RAILWAYS SECTOR**

The Indian Railways are operated by the Ministry of Railways under the government of India. It is the third largest rail network in the world with a route length of over 115,000 km with nearly 23 million passengers and 3 million tonnes of freight being transported daily.<sup>313</sup>

### **CONSUMER ISSUES**

For a consumer, the railways are an important means of travel. Commuting for work, travelling to another place for tourism purposes or transporting freight for business etc. are the major usages of the railways.

Accordingly, the consumer grievances with the railways arise due to difficulties in booking tickets, inordinate and unjustified delays in the railway schedule, unclean food and water served, loss of any personal belongings etc.

### **RAILWAY CLAIMS TRIBUNAL**

As per Sec. 2(1)(o) of the Consumer Protection Act, 1986, the word ‘service’ includes provision of facilities in connection with transport.<sup>314</sup> Accordingly, consumer grievances with the railways can be brought under the purview of the Sec. 2(1)(g) of the Act, which deals with deficiency of services.<sup>315</sup>

For the purpose of hearing disputes relating to the railways, the Railway Claims Tribunals Act, 1987 was passed which established the Railway Claims Tribunal.<sup>316</sup> The tribunal has exclusive jurisdiction<sup>317</sup> to resolve disputes for all matters dealing with<sup>318</sup>:

313 IBEF, 'Indian Railways Industry' <<https://www.ibef.org/industry/indian-railways.aspx>> accessed 14 July 2019

314 Consumer Protection Act, 1986, s 2(1)(o).

315 Consumer Protection Act, 1986, s 2(1)(g).

316 Railway Claims Tribunals Act, 1987, s 3.

317 Railway Claims Tribunals Act, 1987, s 15.

318 Railway Claims Tribunals Act, 1987, s 13.

- i) Payment of compensation for loss or non-delivery of any good entrusted to the railways for carriage.
- ii) Payment of compensation under Sec. 82A of the Railways Act, 1989.
- iii) Payment of any claim of refund of fares or refund of payment of freight.

## CASES

### Improper information regarding service of trains

#### **G.M.Northern Railway State Entry Road, New Delhi v. Manoj Kumar<sup>319</sup>**

**Facts:** The Respondent / Complainant booked a three tier AC ticket for travel from Allahabad to Delhi in Lichchavi Express. The date of travel was 08.03.2013. It is the case of the Complainant that on 08.03.2013 when he reached Allahabad junction at the time of departure of train mentioned in the ticket, he found that service of the said train was cancelled. On inquiry, he was told that aforesaid train was not running for last few months. The Respondent filed a consumer Complaint. The Petitioner /Opposite Party appeared before the District Forum on hearing dated 17.10.2013 when he was supplied with copy of the paper book and the matter was adjourned to 03.01.2014. On 03.01.2014, the Petitioner failed to put in appearance. Accordingly, Petitioner/Opposite Party was preceded ex parte and the complaint was allowed with following directions: OP was proceeded ex parte. The forum considered the complaint. It is clear case of deficiency on the part of the OP in issuing a ticket from internet without updating information on internet about its non-availability of the services. This has resulted in direct harassment to the Complainant by his booking the train and reaching the station and postponement of showing. In reply to RTI inquiry from the Complainant railways has informed him that train was cancelled from 29.12.2012 vide message no.EO/194/NR dt.27.02.2013 and this cancellation was further extended. This clearly proves the deficiency on the part of the OP. Keeping in view the nature of deficiency and inconvenience caused to consumer and many other like him. The forum awarded

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<sup>319</sup> 2014 SCC OnLine NCDRC 369.

compensation of Rs. 25000/- to the Complainant including litigation expenses. By the impugned order passed by the forum the Petitioner filed the revision petition.

**Issue:** Whether there was deficiency in service by railways?

**Decision:** The Commission held that the ticket was booked by the Complainant on internet on 14.02.2013 for the travel dated 08.03.2013. It is the case of the Petitioner in his revision petition that running of train in question was cancelled by the railway officials from 01.01.2013 to 17.02.2013 and cancellation was further extended till 15.03.2013. The least expected from the railway was to intimate the Respondent/Complainant about the cancellation of running of train on 13.02.2013 in order to save him of unnecessary trouble to visit the railway station to board the train which was not cancelled. This is gross deficiency in service on the part of the Petitioner/ Opposite Party. Therefore, we do not find any fault with the orders of the foras below in allowing the complaint and awarding the compensation. In view of the discussion above, we find no reason to interfere with the impugned order in exercise of the revisional jurisdiction. Revision petition is, therefore, dismissed.

#### Negligence by railway authorities

##### **Western Railway v. Vinod Sharma<sup>320</sup>**

**Facts:** The Complainant, Vinod Sharma, aged 34 years, was employed with M/s. S.K.I.L. Infrastructure Ltd. as Administrative Manager and he used to commute from Virar Station to Churchgate Station in Mumbai, every day by local train. He was holder of a first-class season ticket/pass effective from 07.05.2010 to 06.06.2010. On 13.05.2010, when the Complainant got down from the local train at Churchgate Railway Station at about 10.45 am, and was going towards his office, a heavy wooden plank/sleeper, approximately 10 ft long and 2 ft wide, fell on his head, from a height of more than 50 feet,

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<sup>320</sup> 2017 SCC OnLine NCDRC 291.

causing grievous brain injury and multiple skull fracture with spontaneous unconsciousness. At that time, renovation work was at progress, but there were no warnings/alert sign-boards or fencing etc. to that effect on the spot. The Complainant was diagnosed as suffering from right hemiparesis grade III upper limbs, grade IV lower limbs and had significant global dysphasia. A part of his skull was removed that would be required to be fixed at a later stage. A consumer complaint was filed in the State Commission against the Opposite Party. The OPs resisted the complaint by filing a written statement before the State Commission, in which they stated that the Commission had no jurisdiction to entertain the complaint in view of Sections 13 & 15 of the Railway Claims Tribunal (RCT) Act, 1987. Moreover, the OPs had already paid more than Rs. 25 lakhs to the Bombay Hospital for medical treatment of the Complainant. The OPs also stated that under Section 124 & 124A of the Railways Act, the Railway Claims Tribunal had the exclusive jurisdiction to entertain the complaint in question. Further, the validity of the season ticket was also questioned.

**Issue:** Whether Railways should compensate for negligence?

**Decision:** The State Commission, after taking into account the averments of the parties, allowed the said consumer complaint and directed the Opposite Party to pay compensation of Rs. 62,87,040/- to the Complainant and an interest thereon @ 9% p.a. from the date of filing complaint till realization. The said amount should be paid to the Complainant within three months from the date of this order in default the amount will carry interest @ 12% p.a. The Opposite Party is directed to bear the entire medical expenses present and future of the Complainant in respect of the said incident, arising out of the said disability as undertaken by the Opposite Party. The Opposite Party is directed to pay an amount of Rs. 5,00,000/- on account of pain, suffering, mental agony and loss of amenities. The Opposite Party is directed to pay an amount of Rs. 15,000/- on account of cost of this complaint. The decision was upheld by the National Commission.

Theft of belongings of complainant

**Chief Commercial Officer (Manager) & 2 Ors. v. Hargovind Chaudhury<sup>321</sup>**

**Facts:** The Hargovind Chaudhury (Complainant/Respondent) travelled from Bhopal to Howrah by Shipra Express on 15.02.2015 allegedly carrying two suitcases containing valuables such as gold earrings, gold chain etc. The case of the Complainant is that he had noticed some unauthorized persons in the reserved compartment in which he was travelling but since no T.T.E. was available in the compartment, the aforesaid information could not be given to him. This is also the case of the Complainant that when the train reached Howrah Station, he noticed that the suitcases which he was carrying with him had been stolen. An FIR was lodged by him at Howrah Station. Alleging the Petitioner to be responsible for the theft of his valuables, the Complainant approached the concerned District Forum by way of a consumer complaint. The contention of the opposite party before the district forum is that during the course of journey, the compartments are mend by the checking staff and in case the Complainant had noticed any unauthorized person in the reserved compartment, he ought to have lodged a complaint by sending SMS to the mobile number dedicated by the Indian Railways for this purpose.

The District Forum having allowed the complaint and having directed the Petitioner to pay a sum of Rs. 2,00,000/- along with the cost of litigation quantified at Rs. 10,000/-, as well as punitive damages quantified at the rate of Rs. 200/- per day till compliance of its order, the Petitioner approached the concerned State Commission by way of an appeal. Vide impugned order dated 21.11.2017, the State Commission set aside the direction for punitive damages while maintaining the rest of the order passed by the District Forum. The State Commission, while setting aside the punitive damages, imposed a penalty of Rs. 10,000/- upon the Petitioner. Being aggrieved from the order passed by the State Commission, the Petitioner is before this Commission by way of this revision petition.

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<sup>321</sup> Revision Petition No. 622/2018 (NCDRC).

**Issue 1:** Whether the Petitioners were deficient in Service?

**Issue 2:** Whether the Respondent had taken the minimal precautions of the theft?

**Decision:** The National Commission observed that the Respondent did not lock the suitcases with the help of a chain before he went to sleep. This was the least precaution expected from the Complainant before he went to sleep since the train was to halt at a number of railway stations between Bhopal and Howrah. It is also find out from the FIR that there is no allegation of any unauthorized person having entered the compartment in which the Complainant was travelling. Therefore, it would be difficult to even accept his case that several unauthorized persons had entered the compartment in which he was travelling. In the absence of any proof of negligence on the part of the Petitioner, resulting in loss to the respondent solely on account of such negligence, the impugned orders directing payment of compensation to the Respondent on account of theft of his belongings cannot be sustained. The impugned order of the State Commission and the District Forum are therefore set aside and the complaint is consequently dismissed.

## **REAL ESTATE SECTOR**

As per official reports and statistics, the Indian real estate sector had a market size of USD 120 billion at the end of 2017, and is expected to reach USD 1 trillion by 2030. It comprises of 4 sectors – housing, retail, commercial and hospitality.<sup>322</sup> Increases in income, rapid urbanisation and government policies which focus on growth of commercial industries have led to a huge demand for residential and commercial real estate opportunities.<sup>323</sup>

### **CONSUMER ISSUES**

The process of buying real estate reveals a lot of uncertainties in the process – the construction will take years to be fulfilled and a substantial amount of money has been invested by the consumer for purchase of their house. Accordingly, the common grievances of consumers with respect to the real estate sector can be divided into two parts – problems faced before construction<sup>324</sup> and problems faced after construction<sup>325</sup>:

1. False/misleading information being given by the real estate agent.
2. Inordinate and unjustified delay in construction.

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322 IBEF, ‘Indian Real Estate Industry’ <<https://www.ibef.org/industry/real-estate-india.aspx>> accessed 14 July 2019.

323 Grant Thornton, ‘Indian Real Estate: Annual Handbook 2018’ <[https://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/realestate\\_annual\\_handbook\\_2018.pdf](https://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/realestate_annual_handbook_2018.pdf)> accessed 14 July 2019.

324 ‘RERA Does Not Bar Homebuyers Complaint Under Consumer Protection Act Against Builder’ (*Mondaq*, 31 May 2019) <<http://www.mondaq.com/india/x/810918/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/RERA+Does+Not+Bar+Homebuyers+Complaint+Under+Consumer+Protection+Act+Against+Builder>> accessed 14 July 2019.

325 Devesh Chandra Srivastava, ‘Consumer courts can help in real estate issues too’ *Live Mint* (24 February 2011) <<https://www.livemint.com/Money/cNffrEBMFKapfhjk0AipM/Consumer-courts-can-help-in-real-estate-issues-too.html>> accessed 14 July 2019.

3. Delay in allotment and transferring the title of property to the consumer.
4. Charging of additional money due to unfair clauses in the contractual agreement,
5. Delay in payment of compensation if a grievance is recognised by the service provider.
6. Selling of common spaces without permission of the residents.
7. Lack of maintenance of facilities and amenities.

## **REAL ESTATE REGULATORY AUTHORITIES**

Before 2016, the real estate sector in India was unregulated. The CREDAI (Confederation of Real Estate Developers' Association of India) is a non-profit organisation which was established in 1999. It lays down a voluntary code of conduct which is applicable to all real estate developers who are members of the CREDAI and it established a Consumer Grievance Redressal Forum in 2012 for resolving disputes among buyers and CREDAI members.<sup>326</sup>

However, its voluntary nature meant that there were no real safeguards available to the buyers. In 2016, the Real Estate (Regulation and Development) Act was passed which provided for the establishment of a Real Estate Regulatory Authority by the state governments in their respective states.<sup>327</sup> The purpose of these authorities is to protect the interests of consumers in the real estate sector.

In addition, it provides for the creation of the Real Estate Appellate Tribunals by state governments in their respective states<sup>328</sup> for hearing all appeals against the order/decision of the Real Estate Regulatory Authority.<sup>329</sup>

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326 CREDAI, 'About Us' <<https://credai.org/about-credai>> accessed 14 July 2019.

327 Real Estate (Regulation and Development) Act 2016, s 20.

328 Real Estate (Regulation and Development) Act 2016, s 43.

329 Real Estate (Regulation and Development) Act 2016, s 44.

## CASES

Mere registration of flat does not confer a right for allotment.

**U.P. Housing and Development Board v. Ramesh Chandra Agarwal<sup>330</sup>**

**Facts:** In 1982, the Appellant floated a scheme for Economically Weaker Sections. The Respondent deposited an amount of Rs. 500/-, initially in 1982, for registration. Later, in 1985, an additional amount of Rs. 500/- was deposited when the registration fee was enhanced to Rs. 1000/-. The Appellant is governed by the Rules, 1979. The first advertisement was published by the Appellant in 1992. In terms of the above Rules, registered applicants were required to furnish their written consent for being included in the draw of lots. None was provided by the Respondent. Respondent filed a consumer complaint nearly eleven years after the date of registration. In the meantime, a second advertisement was published by the Appellant on 15 January 1995. By an order, the District Forum, Ghaziabad disposed of the complaint by directing that, the Respondent, at the highest, may secure an allotment, if he so desires at the current value fixed by the Appellant. Against this order of the District Forum, the Respondent filed a first appeal before the State Commission. On 25 September 1995, the Appellant published an allotment notice indicating the proposed allotment of vacant properties. On 28 August 1996, the Appellant enhanced the registration amount and all existing registered applicants were required to pay the difference in order to keep their registration alive for future schemes. On 1 November 2002, the Appellant issued an office order providing that those applicants who failed to get an allotment in the draw of lots could be entitled to refund of the registration monies. Thereafter, appeal was dismissed by the SCDRC in the absence of any representation by the Respondent. The Respondent then filed a revision before the National Commission. A direction has been issued to the Appellant to allot a flat on the ground floor in the Mandola Vihar Yojana, Ghaziabad to the Respondent subject to his paying a sum of Rs. 2,50,000/- towards consideration for the flat within a period of

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<sup>330</sup> MANU/SC/0691/2019.

six weeks from the date of the passing of the order. Aggrieved by the direction of the NCDRC appellant filed the revision petition before the Hon'ble Court.

**Issue:** Whether National Commission erred in issuing a direction to Appellant to make an allotment to Respondent?

**Decision:** Supreme Court set aside the order of NCDRC and held that the Appellant is governed by the terms and conditions advertised in its Registration Booklet and by the Rules of 1979 such as (i) mere registration does not confer a right for allotment, (ii) the Board is not bound to allot a house or plot to every registered holder, (iii) that after the Board advertises the availability of a scheme in the newspaper, every registered applicant is at liberty to submit a consent letter for participation in the draw of lots and the applicant must show readiness and willingness to participate in a draw of lots in respect of a specified scheme.

Delay in granting possession

**Wg. Cdr. Arifur Rahman Khan and Aleva Sultana & others v. DLF Southern Homes Pvt. Ltd. (Now Known As Begur Omr Homes Pvt. Ltd.)<sup>331</sup>**

**Facts:** Complainants had booked residential flats in a project called Westland Heights at New Town, DLF in Bengaluru. The agreement entered into between the buyers and the developer stipulated the completion of the project within 36 months from the date of execution of agreement except for force majeure conditions. The flat-buyers were informed on 12 January 2011 that possession of apartments was expected to be completed by mid-2012, the dates were further extended up to 2015 when they were informed of another delay by a notification dated 4<sup>th</sup> May 2015 that they hadn't received the Occupation Certificate (OC), thus the obligation of handing over possession within 36 months was not fulfilled. The NCDRC accepted the submission of the Respondent that there was no deficiency on their part in complying with the contractual obligations and that despite delay in handing over

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<sup>331</sup> (2020) SCC OnLine SC 667.

possession of the flats the Complainants were not entitled to compensation in excess of what was set-out in the Apartment Buyers Agreement which is Rs. 5 per sq. ft per month.

**Issue:** Whether the flat-buyers are constrained by the stipulation in Apartment Buyers Agreement of providing compensation at the rate of Rs. 5 per sq. ft per month?

**Decision:** The Supreme Court observed that failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. In cases where there is a gross delay in the handling over the possession beyond the contractually stipulated period, the jurisdiction of the consumer forum to award just and reasonable compensation is not constrained by the terms of a rate in builder agreement.

#### **Sanjay Gupta v. Three C Shelters<sup>332</sup>**

**Facts:** The original allottee had booked an apartment in OP's project for a certain consideration. An agreement was executed between the parties. However, the Opposite Party failed to deliver the possession in 42 months inclusive of 6 months grace period. The case of the OP was that the buyers had stopped paying instalments after a certain period and consequently as per Section 55 of the Indian Contract Act, 1872 and thus, they are not entitled to any relief.

**Issue:** Whether there was inordinate delay and would the buyers be entitled to compensation?

**Decision:** The Court held that the OPs clearly had time to deliver possession of properties to the respective Complainants in time as per the allotment letter and the agreement. Thus, the allottees should have the right to ask for refund if the possession is inordinately delayed and especially beyond a year. The court observed that the instalments had been payed up to reasonable

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<sup>332</sup> 2020 SCC OnLine NCDRC 178.

time and the payment only stopped later when there was no progress in construction. Thus, there cannot be said to be in any breach. A delay of 42 months is a long period and would be considered as inordinate delay and thus the Commission directed the companies to refund approx. 12 crore to the buyers.

**DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda and Ors.<sup>333</sup>**

**Facts:** The Complainant booked a built up flat for purchase in pursuance of a brochure of DLF Valley in Sector 3, Kalka-Pinjore Urban Complex, Panchkula, Haryana. The Buyer's Agreement was executed and the possession of the unit was contemplated to be delivered within 24 months from the date of execution of the agreement and further it was agreed that failing of the delivery of the possession the Appellant was liable to pay Rs. 10/- per sq. ft. per month for the period of delay. There was a delay in delivering of the flats. The Complainant was fled before the SCDRC. The SCDRC directed to handover the physical possession of the unit allotted in favour of the Complainant and to execute the registered sale deed within a month and also directed to pay 12% interest (p.a.) on the amount deposited as compensation and Rs. 35,000/- towards cost of litigation. The Appellants then approached the NCDRC, whereby a bench of Dr. SM Kantikar and Dinesh Sharma only partially modified the order passed by SCDRC and directed DLF Homes Panchkula Private Limited to pay compensation of Rs. 1 lakh to the buyers besides Rs. 1 lakh as cost of litigation and Rs. 25,000/- to be deposited in the Consumer Legal Aid Account of the State Commission, within four weeks on account of unfair trade practice in each of the 16 cases before the Commission. The commission further said that it did not find anything wrong with the order of the State Commission in awarding compensation in two parts aggrieved by the same Appellants approached the Supreme Court.

**Issue:** Whether Force Majeure is a Ground for Builder to Seek Condonation of Delays in Giving Possession of Flats?

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<sup>333</sup> MANU/SC/0744/2019.

**Decision:** The Supreme Court held that, “the grant of interest at the rate of 15% by SCDRC is highly excessive. Since in other two set of appeals decided earlier, this Court has awarded interest at the rate of 9% per annum on the amount of refund, therefore, the order of SCDRC stand modified so as to pay interest at the rate of 9% per annum from the date of deposit till the date of refund. However, in case any transfer of the flat, such interest will be payable from the date of expiry of three years from the date of agreement or from the date of transfer whichever is later.” Thus, the Costs of Rs. 35,000/- imposed by the SCDRC was maintained and the amount of refund was to be paid to the Complainants within two months along with the costs.

**Sahara Prime City v. Tapasya Palawat<sup>334</sup>**

**Facts:** The Complainant, Tapasya Palawat, had booked a flat with the Developer and had deposited 15% of the agreed total consideration. Accordingly, the Complainant was allotted a Flat in August 2009 but the same was cancelled due to non-payment by the Complainant. The Complainant accorded the said failure of payment to her prolonged illness since December 2009 and gave a representation to the Developer that she was willing to pay the amount due and accept the possession.

On refusal of this request, the Complainant approached the State Commission of Rajasthan which allowed the complaint ex-parte, due to non-appearance of the Developer. The Commission directed the Developer to restore the allotment in the Complainant’s favour on payment of the balance consideration and ordered that in case it was not possible to hand over the possession, the Developer would refund the amount to the Complainant along with interest.

**Decision:** The present appeals were filed by both the Developer and the Complainant under Section 19 of the Consumer Protection Act, 1986, seeking setting aside of the order and enhancement of compensation, respectively. The NCDRC took note of the fact that the concerned Project was incomplete till date and the Developer was not in a position to hand

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<sup>334</sup> F.A. No. 489 of 2013 (NCDRC).

over possession to the Complainant. In this regard it held that there was deficiency in Developer's services. The Court said that the Developer had promised possession of the flat within 38 months from the date of allotment but till date the fact remains that the Developer is not in a position to offer legal possession of the subject apartment with the Occupation Certificate. They held that the cancellation by the Developer is unilateral and their action in forfeiting the deposited amount amounts to unfair trade practice. the Commission stated. Accordingly, the Commission dismissed the Developer's appeal and held that the Complainant was entitled to enhanced compensation of Rs. 2,00,000/- for mental agony and financial loss as more than 10 years had lapsed and till date the possession could not be given; and additional interest @ 12% p.a. was also allowed.

**M/s Treaty Construction vs. M/s Ruby Tower Co-op. Hsg. Society Ltd.<sup>335</sup>**

**Facts:** The crux of the Complaint was that several sale deeds were executed between a Co-operative Housing Society and M/s Treaty Construction during the period 1994 to 2002 whereby, its members purchased certain apartment units as also commercial units of varied sizes but, despite making payment over and above the agreed sale consideration, the builders failed to discharge their part of the contract inasmuch as the interior works remained incomplete; and they also failed to obtain the Completion Certification as also the Occupancy Certificate.

**Issue:** Whether the objection regarding pecuniary jurisdiction should be raised before the Consumer Forum/Commission at the earliest opportunity?

**Decision:** The Supreme Court held that when the State Commission having already decided the matter on merits, such a technical objection as regards pecuniary jurisdiction could not have been countenanced before the National Commission. The National Commission (NCDRC) had rejected the contention of the Appellants that the State Commission had no pecuniary jurisdiction on the ground that the same was not urged before the State Commission and the matter was decided on merits. In appeal, the bench

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<sup>335</sup> SLP (Civil) No. 13984 of 2018.

comprising Justice Abhay Manohar Sapre and Justice Dinesh Maheshwari observed: “The contention on the part of Appellants as regards pecuniary jurisdiction has only been noted to be rejected. The National Commission has observed, and rightly so, that such a plea was not specifically raised before the State Commission at the earliest opportunity; and the State Commission having already decided the matter on merits, such a technical objection as regards pecuniary jurisdiction could not have been countenanced before the National Commission. We find no error in the National Commission rejecting this plea as being wholly untenable at the given stage.” The bench upheld the part of the National Commission order directing the builders to pay Rs. 25,00,000/- to the society. However, the direction to pay compensation to the tune of Rs. 3,00,000/- was set aside.

**M/s Country Colonisers v. Harmit Singh Arora<sup>336</sup>**

**Facts:** The NCDRC was hearing complaints filed against the builders Country Colonizers Pvt. Ltd. under Section 17 of the Consumer Protection Act, 1986. The builders had invited applications for residential project ‘Wave Garden’ in Mohali in which investments Rs. 10 crore had been made by around 20 last home buyers. Although the builders had promised completion of the project within 3 years, they had failed to complete it within the last 7 years. The Complainants had pleaded for obtaining a fair amount from the builder consisting of the refund of the deposited amount, with ‘just and equitable interest’ lump sum compensation and cost of litigation.

**Issue:** Whether the builder is required to refund money to home buyers for delayed projects with interest rates similar to the rate for a house building loan in a corresponding period given by scheduled nationalized bank?

**Decision:** The bench comprising of S.M Kantikar and Dinesh Singh, finding deficiency in service under section 2(1)(g) & (o) and unfair trade practices under section 2 (1)(r) on the part of the builders, held that they would have to pay compensation and litigation costs to home buyers seeking a refund. Observing that there cannot be two opinions about refunding the amount, the Commission held that in respect of the interest on the amount deposited,

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<sup>336</sup> First Appeal No. 542 of 2017.

it is always desirable and preferable, to the extent feasible and appropriate in the facts and specificities of a case, that some objective logical criteria be identified and adopted to determine an apt rate of interest. The rate of interest cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, and subjectivity has to be minimized. The Court, bearing in mind that the subject unit in question is a residential dwelling unit, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (for instance, State Bank of India) would be appropriate and logical, and, if ‘floating’ / varying / different rates of interest were / are prescribed, the higher rate of interest should be taken for this instant computation. Lumpsum compensation and a cost of litigation of 1 Lakh each was awarded to the buyers. The Court further held that the first charge on such amount would be to the banks, in view of the loans to facilitate transaction between the buyer and the builder, reasoning, that they function as per their rules and should not be unnecessarily and unjustifiably put to trouble in a consumer dispute substantively between the buyer and the builder. It was further observed that once the amount awarded for deficiency in service was adjudicated, the onus on the builder would be prompt and dutiful in making necessary payments within the stipulated time. It was held that creating further harassment, difficulty and helplessness for the ordinary consumers by delaying payments was unacceptable and delay would be penalized. The builder i.e. the juristic person along with the Directors has been concerned functionaries are liable individually, jointly and severally as per the observation of the Court in reference to section 25(3) and penalties under section 27(1) of the Act

**Fortune Infrastructure and another v. Trevor D’lima and others.<sup>337</sup>**

**Facts:** In the year 2011, the Appellants, ‘Fortune Infrastructure’ launched a residential housing project by the name ‘Hicons Onyx’, renamed as Fortune Residency. The Respondents ‘Trevor D’lima and others’ booked a flat with one unit of parking-space. The total consideration for the flat was Rs. 1,93,00,000/-. It is alleged by the appellants, that due to increase in the

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<sup>337</sup> (2018) 5 SCC 442.

cost beyond what was expected, they transferred the project to another company being M/s. Zoy Shelcon Pvt. Ltd. Aggrieved by the fact that the Appellants were not willing to deliver the flat to them, the Respondents approached NCDRC through a consumer complaint. The NCDRC had allowed the complaint and directed the Appellants to refund the amount of Rs. 1,87,00,000/- within six weeks from the day of the impugned judgment. The Appellants were further directed to pay a sum of Rs. 3,65,46,000/- as compensation and Rs. 10,000/- as cost of litigation to the Complainants within six weeks from the day of the impugned judgment. The aforesaid amount was ordered to be paid at 10% per annum from the date of the order till the actual date of payment. Further the review against the aforesaid order was also dismissed by the NCDRC. Aggrieved by the decision of the NCDRC, this appeal before Supreme Court was filed.

**Issue:** Whether there is deficiency of service on the part of the appellants?

**Decision:** It was observed a time period of 3 years would have been reasonable for completion of the contract. As the Respondents were made to wait indefinitely for the possession of the flats and there were no valid reasons for the transfer of the property to a third party, Hon'ble Supreme Court was drawn to an irresistible conclusion that there was deficiency of service on the part of the Appellants. Accordingly, the Appellants were directed by the Supreme Court to refund the amount of Rs. 1,87,00,000/- which they had received from the Complainants, to pay a sum of Rs. 2,27,20,000/- as compensation, a sum of Rs. 20,00,000/- as compensation for one unit of parking lot and Rs. 10,000/- as the cost of litigation to the Complainants.

#### **Supertech v. Rajani Goyal<sup>338</sup>**

**Facts:** The Appellant was developing a project named 'Capetown' in Sector 74, Noida. The Respondent booked a residential flat with the Appellant in the said project. On 22.05.2012, the Appellant vide Allotment Letter allotted Flat No. 1606 to the Respondent. As per the Allotment Letter, possession would be handed over in October 2013. This period could be

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<sup>338</sup> 2018 SCC Online SC 2114.

extended due to unforeseen circumstances by a maximum of 6 months. The Agreement also provided for escalation charges if there was any fluctuation in the price of construction materials and/or labour costs during the course of construction, payable by the Respondent. The Agreement provided for payment of maintenance charges by the Respondent for maintenance and upkeep of the complex. These maintenance charges were payable from the date of issuance of a 'Letter of Offer of Possession'. The Appellant was not able to hand over possession of the flat in October 2013 as per the Allotment Letter dated 22.05.2012. The Appellant issued a Pre-Possession Letter on 12.10.2015 to the Respondent for completion of formalities, before possession could be handed over. The Pre-Possession Letter stated that upon completion of formalities as specified in the Letter, possession of the flat would be offered to the Respondent. The Respondent was called upon to pay Rs. 12,35,656/- towards the balance cost of the flat, maintenance charges, labour welfare charges, water connection charges, escalation costs, etc. The Respondent was called upon to deposit the charges on or before 11.11.2015. The Respondent failed to pay the charges demanded as per the Pre-Possession Letter by the Appellant. That after over 15 months, on 15.03.2017, the Respondent-Purchaser filed a Consumer Complaint Under Section 21(a)(i) of the Consumer Protection Act, 1986 before the National Consumer Disputes Redressal Commission. The Respondent challenged the Pre-Possession Letter on the ground that on the date of issuance of the Pre-Possession Letter, the Appellant had not obtained the Occupancy Certificate. The Respondent also challenged the various charges demanded by the Appellant in the Pre-Possession Letter. The Commission vide judgment and Order dated 07.02.2018, partly allowed the Consumer Complaint of the Respondent. The Commission held that out of the charges mentioned in the Pre- Possession Letter dated 12.10.2015, the Appellant was entitled to payment of the following amount of Rs. 3,166/- towards interest on delayed payment and in regard to the amount of Water connection charges & Labour welfare charges if paid to the concerned Authority, on proportionate basis subject to furnishing proof of such payment, in terms of this order and Escalation charges along with service tax amounting to Rs. 3,88,797.19/-. It further held that since there was a delay in handing over possession of the flat to the Respondent, the appellant was liable to pay interest to the

Respondent by way of Compensation. It directed the Appellant to pay compensation in the form of Simple Interest @ 8% p.a. from 1/11/2013 till date on which possession was actually offered to the Respondent.

Aggrieved by the order, the appellant filed Review Petition before the National Commission. The said Review petition is also dismissed aggrieved by the decision Appellant has preferred the present Civil Appeal before this Hon'ble Court under Sec. 23 of the Consumer Protection Act.

**Issue:** Whether there is any deficiency of Service on the part of Appellant?

**Decision:** The Supreme Court observed that even though the Agreement provided for delivery of possession by 31.10.2013, the delay occurred because of various legal impediments in timely completion of the project because of various Orders passed by the National Green Tribunal. The delay ought to be computed from 6 months after 31.10.2013, i.e. from 01.05.2014 by taking into consideration, the 6 months grace period provided in the Agreement. Furthermore, the period of Interest should close on April 2016 when the Full Occupancy Certificate was obtained as per the admission of the Respondent wherein she has admitted that the Appellant- had obtained the Completion Certificate in April 2016. The Respondent could not have any further grievance after April 2016 with respect to delay in handing over possession. The Respondent ought not to be allowed to reap the benefits of her own delay in taking possession. In light of the aforesaid discussion, the Supreme Court upheld the decision on modifying the period of compensation of Interest must be computed from 01.05.2014 till 30.04.2016 at the rate awarded by the Commission and disposed the appeal.

**Praveen v. Earth Infrastructures Ltd. and Ors.<sup>339</sup>**

**Facts:** The Complainant booked a residential flat with the Opposite Party Earth Infrastructures Ltd., which the Opposite Party was to develop in Sector-112 of Gurgaon. The Opposite Party allotted residential Unit No. 404 in Tower G having super area of 1835 sq. ft. to him for a consideration of Rs. 81,78,580/- . The Complainant has paid a sum of Rs. 58,74,142.00/- to

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<sup>339</sup> 2017 SCC OnLine NCDRC 1842.

the Opposite Party in instalments. The possession as per the buyer's agreement was to be delivered by 30.11.2015. The grievance of the Complainant is that though more than two years were expired from the stipulated date for completing the construction it was not complete. Thus Complainants are before National Commission, seeking refund of the entire amount paid along with compensation in the form of simple of interest. The Opposite Party Earth Infrastructures Ltd. contends that the Complainant has defaulted in making payment in terms of the payment plan agreed by him since 80% of the sale consideration has become due from him. It is further stated in the reply to the complaint that the construction has already reached up to 12 floors and the construction is likely to be completed by April, 2018.

**Decision:** Hon'ble NCDRC observed that in any case, if the Complainant was in default in making payment, the opposite party ought to have cancelled his instalment and have forfeited the money as per the terms and conditions of the buyer's agreement. That having not been done, the Opposite Party is deemed to have condoned the aforesaid default.

Hon'ble NCDRC held that the Complainant cannot be made to wait indefinitely for the possession of the allotted flat. The Complainants therefore are entitled to refund of the entire amount paid by them along with appropriate compensation. Holding the real estate developers guilty of deficiency in services, the National Commission directed the real estate developers to refund the entire principal amount of Rs. 58,74,142.00/- along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date on which the entire amount long with compensation in the form of simple interest is refunded. Also the Opposite Party has to pay Rs. 25,000/- as the cost of litigation to the Complainants. The payment in terms of this order shall be made within three months from today.

**Ranjeet Bhatia and Another v. Supertech Limited<sup>340</sup>**

**Facts:** According to the complaint filed by the Complainant, he booked a flat worth Rs. 1.35 crore with the firm's project in Noida which, as per the

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<sup>340</sup> 2017 SCC OnLine NCDRC 600.

allotment letter, was supposed to be handed over in July 2015. The delivery date was further extended to January 2016. Even after extension of delivery date and the payment of Rs. 55,92,636/- the firm failed to hand over the possession. The Complainant prayed before the court for full refund of Rs. 55,92,636/-. The builder claimed that only Rs. 45.92 lakhs were paid by the Complainant and in case of delay they were entitled only to an agreed compensation of Rs. 5 per sq ft per month of the super area in terms of clause 3 of the allotment letter.

**Issue:** Whether there was deficiency in service by the opposite party in handing over the possession of flat?

**Decision:** Considering the failure of the OP to perform its contractual obligation by offering possession of the flat booked by the Complainant, the Complainant cannot be compelled to wait for an uncertain period till the OP is able to complete construction of the flat which was booked by the Complainant. NCDRC directed the real estate firm Supertech Limited to pay the amount of Rs. 55,92,636/- to the Complainant along with the 10% simple interest from the date of each installment, till the realisation of full amount. The commission also directed the Supertech to pay Rs. 10,000 as litigation costs.

**Aditya Laroia v. Parsvnath Developers Limited, Through its Managing Director<sup>341</sup>**

**Facts:** The Complainant booked a residential flat in a project namely “Parsvnath Privilege”, which the opposite was to develop in Greater Noida and a Flat Buyer Agreement was executed between the parties on 17.07.2007. The booking was made on 01.05.2006 against payment of Rs.10 Lakhs. As per the terms and conditions agreed between the parties, the possession was to be delivered within 36 months from the date commencement of construction of the particular block in which the flat to be located, on receipt of requisite approvals including sanction plan, environment clearances etc. The grievance of the Complainant is that the construction of the flat booked

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<sup>341</sup> 2016 SCC OnLine NCDRC 1489.

by him is far from complete and when he visited the site he found not a single worker employed at the site and was informed that the builder has stopped the construction work. Being aggrieved from failure of the Opposite Party to deliver upon its promise the complainant files a case. Since the developer failed to deliver possession the flats to them, they approached the Commission seeking refund of the amount paid by them along with interest and compensation etc.

**Issue:** Whether there was deficiency in service by the Opposite Party i.e. Parsvnath Developers Limited in handing over the possession of flat within 36 months from the date of commencement of construction?

**Decision:** The complaint was disposed of with a direction to the Opposite Party that it was a deficiency in service by the builder and he had to refund the entire amount received by it from the Complainant along with compensation to him in the form of simple interest @ 18% per annum from the date of each payment till the date on which the said refund along with compensation in the form of interest is paid. The payment in terms of this order shall be made by the Opposite Party within three months from today failing which the Complainant shall be entitled to seek execution of this order in accordance with law.

**Devikarani Rao v. MGF Land Limited, Hyderabad and another<sup>342</sup>**

**Facts:** Ms. Devikarani Rao Nallamala, widow of Late Mr. Nallamala Radhakrishna Rao, aged about 72 years, the Complainant, had filed the petition against builder Emaar Hills Township Land Ltd. She applied for a 3-BHK apartment bearing No. BH EXCL TB-F07-B1-02/B2, the unit in Tower B, Floor 7, Core B1, Unit No. 2, Unit Type B2 with an approximate super built up area of 2723.13 sq. ft., for a total consideration of Rs. 1,93,89,597/- on 12.07.2008. She paid the first instalment in the sum of Rs. 19,38,960/- on 26.07.2008. She entered into an agreement with Emaar MGF Land Ltd., OP-1 and Emaar Hills Township Pvt. Ltd., OP-2, wherein it was agreed that OP-1 was to complete the construction of the apartment within a period

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<sup>342</sup> 2016 SCC OnLine NCDRC 266.

of 36 months from the commencement date, i.e., 02.05.2008 with a grace period of 6 months. Thereafter the OP-1 was required to handover the possession of the apartment and simultaneously execute and duly register the sale-deed in favour of the Complainant. The Complainant paid all the instalments of Rs. 16,69,506/- on 20.11.2010, for a total consideration of Rs. 1,93,89,597/- which date is crucial and determinative of present controversy. In the meantime, the Complainant received orders from Andhra Pradesh High Court wherein CBI investigations were ordered against the OPs. SLP was filed before the Apex Court. The Complainant came to know that they were not going to receive the possession in near future. Legal notice was sent by the Complainant to the OPs that her amount is refunded with interest. The legal notice was replied. It also transpired that OPs had invoked force majeure clause.

**Issue:** Whether there was deficiency in service by the Opposite Party in handing over the possession of flat?

**Decision:** It was held that there was deficiency of service by the builder and he was directed to pay the amount which was paid by the Complainant along with interest @ 10% simple interest from the dates of deposits till its realization. There shall be no order as to costs.

**Jalandhar Improvement Trust v. Munish Dev Sharma<sup>343</sup>**

**Facts:** In the year 2011, Jalandhar Improvement Trust framed a 'Development Scheme' for allotment of residential plots in Surya Enclave Extension at Jalandhar and after taking substantial amount of money from the Respondents, the Appellants issued allotment letters to them, allotting specific plots. However, Appellants failed to handover possession of the plots to the Respondents for more than 3 years. Earlier, The legal defence of Trust was that acquisition of land for the aforesaid scheme was challenged by various land owners by way of various writ petitions before the Punjab and Haryana High Court and there was a stay, hence, appellants were not in a position to handover the possession of the plots. When the Respondents approached Punjab State Consumer Commission, it directed Jalandhar Improvement Trust

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<sup>343</sup> 2015 SCC OnLine NCDRC 919.

to refund Rs. 28,22,950/-along with interest at the rate of 9% per annum from the date of filing of the complaint till the date of payment and to pay Rs. 2,00,000/- as compensation along with Rs. 5,000/- as litigation costs. It was further moved to NCDRC.

**Issue :** Whether there was deficiency in service by Jalandhar Improvement Trust?

**Decision:** NCDRC also observed that. “It was well within the knowledge of the Appellant-Trust, that there was an impediment in allotment of the plots in question. In spite thereof, Appellant-Trust had gone ahead and allotted plots in question to the Respondents, which it could not have done so. In this manner, Appellants have played fraud with the general public and thus collected huge amount of money.” While referring to various judgments of Supreme Court, NCDRC held strict stand towards frivolous and uncalled for litigations and noted that if any litigant approaches the court of equity with unclean hands, suppress the material facts, make false averments in the complaint/ appeal and tries to mislead and hoodwink the judicial Forums then his complaint/ appeal should be thrown away at the threshold. NCDRC also held that the said act of Jalandhar Improvement Trust is a “deceptive practice” which falls within the meaning of “unfair trade practice” as defined under the Consumer Protection Act, 1986. “Such type of unscrupulous act on the part of builders should be dealt with a heavy hand, who after grabbing the money from the purchasers, enjoy and utilize their money but do not hand over the plot, on one pretext or the other,” Commission added. NCDRC further directed the Appellants to pay a sum of Rs. 2.5 lakh out of Rs. 5 lakh to the Respondents and deposit the rest Rs. 2.5 lakh in the Commission’s Consumer Legal Aid account. NCDRC has imposed a fine of Rs. five lakh upon Jalandhar Improvement Trust, for abusing the process of law and filing meritless appeals before various consumer foras in order to cover up its own fault and negligence. “No leniency should be shown to litigants who in order to cover up their own fault and negligence, goes on filing meritless complaints/ appeals in different foras. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the other party of the fruits of the decree must be dealt with heavy hands”.

Not giving parking spaces to flat owners is deficiency in service

**Marvel Omega Builders Pvt. Ltd. and Ors. v. Shrihari Gokhale and Ors<sup>344</sup>**

**Facts:** The Respondent had booked a residential villa in a project named Marvel Selva Ridge Estate to be developed by the Appellants. The total considerations for the villa with three covered car parking spaces and open terrace and entered into an agreement incorporating mutual obligations. The Respondent had deposited Rs. 8.14 crores with the Appellant and the Appellant had agreed to deliver the possession on or before 31.12.2014. But neither the villa was complete by the due date nor was any refund made by the Appellants. The Appellants contended that April, 2014 the Respondents had suggested extra work amounting to Rs. 2,67,000/- and that Stop Work Notices were 02-12-2019 issued by the Pune Municipal Corporation on 23.07.2014 and 15.11.2014. Since the possession of the villa was not delivered, the Respondents filed Complaint before the National Commission. The Commission observed that the additional work requested by the Respondents was of such nature that at best three months additional period could be granted for executing such extra work. It was observed that even till the filing of the Complaint, the possession of the villa was not offered to the Respondents and that if there were Stop Work Notices issued by the Pune Municipal Corporation, the Respondents could not in any way be held responsible for the same and allowed the complaint directing the Appellant refund the entire principle amount and Rs. 25,000/- as cost of litigation.

**Issue:** Whether the view taken by the national commission was correct and whether it requires any interference by this Court?

**Decision:** The Supreme Court observed the facts on record which clearly indicates Appellant have failed to discharge the obligation. There was total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken and dismissed the appeal.

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<sup>344</sup> MANU/SC/1003/2019; 2019(5).

Error in layout maps

**Urban Improvement Trust, Bikaner v. Mohan Lal<sup>345</sup>**

**Facts:** In this Special Leave Petition to the Supreme Court under Article 136 of the Constitution of India, 1950, the Petitioner allotted a Plot (A-303) measuring 450 sq.ft. under its Karni Nagar Scheme to the Respondent in the year 1991. Respondent paid the allotment price (lease premium) of Rs. 3,443/- in 1992 and took possession in 1997. In the year 1998, the Petitioner-Trust allotted to Respondents and delivered possession of the adjacent strip measuring 150 ft. the Trust without notice to the Respondent and without resorting to any acquisition proceedings, laid a road in the said plot. The layout map prepared and made available by the Trust in the year 2002 did not show the existence of Plot A-303 or its adjoining strip. Feeling aggrieved, the Respondent met the officers of the Trust and complained to them. He also gave a written complaint seeking restoration of the plot. As there was no response, he approached the District Consumer Forum in 2005, praying for restoration of the plot or for allotment of an alternative site and award of damages of Rs. 200,000/-. The District Forum disposed of the complaint directing refund of the allotment price paid with interest at 9% per annum. The State Commission allowed the appeal filed by the Respondent and directed allotment of an alternative plot and also awarded Rs. 5,000/- as compensation. The National Commission dismissed the revision petition filed by the Petitioner Trust. Special leave is sought to challenge the said order of the National Commission.

**Issue:** Whether or not there was negligence on behalf of the Petitioner?

**Decision:** The Supreme Court held that decision of the State Commission rejecting the above contentions is just and reasonable. The Supreme Court further held that the Petitioner did not offer any explanation for its negligence or action of taking over allotted plot without notice, acquisition, or consent of Respondent. The National Commission was justified in not interfering with the said decision. We are satisfied that no case is made out to grant special leave under Article 136 of the Constitution of India, 1950.

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<sup>345</sup> (2010) 1 SCC 512.

Whether beneficiary on transfer of allotment of flat is a consumer under Consumer Protection Act, 1986

**CCI Project (P) Ltd. v. Vrajendra Jogjivandas Thakkar<sup>346</sup>**

**Facts:** Vrajendra J. Thakkar and Hemali Vrajendra Thakkar had booked the two residential flats in their respective names with the Appellant in a project named “White Spring Building” which the Appellant was to construct at Magathane village Dattapada Road, Borivali (East), Mumbai for a consideration amount of Rs. 90,38,850/- each. Flat No. 6A is allotted to Vrajendra and Flat No. 6B is allotted to Hemali. The parties entered into agreement dated 30/10/2012 and in terms of the agreement the possession of the flats was to be delivered by August, 2014. Thereafter Both Vrajendra and Hemali transferred the allotment in favour of Kumudben Jagjivandas Thakkar. Kumudben Further gifted the very same Apartment to the present Respondent. On 02/06/2016 the aforesaid consumer filed a Complaint before the National Consumer Dispute Redressal Commission contending that though the sum of Rs. 85,86,911/- had been deposited in respect of each of the flats, no possession was delivered by the Appellant. The Appellant resisted the complaint and submitted that the construction activity had begun obtaining requisite permission and however New development Control rules notified in 2012 obliged the builder to prefer fresh application in that behalf and additionally therefor more than 24 months there was a restriction on sand mining activity as a result of which is the basic raw material for the construction of building. Further the Appellant contended before the commission that the Respondent are default of Rs. 1,04,207/- in respect of each flats. During the pendency of the matter before the commission the possession of the aforesaid flats was offered by the Appellant vide letter Dt.16/11/2016. The Commission directed the Complainants to deposit the sum with the commission and handover the possession. The commission rejected the contention of the Appellant in respect of the NOC granted and regarding the non-availability of the sand by observing that no documents had been placed on record to substantiate it. The commission observed that the sums of Rs. 1,04,207/- which the Appellant sought to recover were not

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346 2018 SCC Online SC 2564.

disputed by the Complainants and disposed the complaint with direction to refund the amount deposited along with interest by the Complainant with the commission and the Opposite Party shall pay a compensation in the form of simple interest @ 8% per annum on the amount which had been paid by that date, to the Complainant till the date on which the possession was handed over and Rs. 25,000/- as cost of Litigation is to be paid to the complainant. Aggrieved by the decision of the National Commission, the Appellant has approached before this Hon'ble Supreme Court of India under Section 23 of the Consumer Protection Act, 1986 on the ground that the original allottees had transferred their interest and the time lost on account of mandatory requirement for re-submission of plans, be extended.

**Issue:** Whether beneficiary on transfer of the allotment of flat, is a consumer?

**Decision:** The Supreme Court held that the transfers effected by the parties were within the family. It also justified that as a result of mandatory requirement to resubmit the plan and get the fresh NOC in respect of the fire safety permission the appellant was entitled for the extension of 6 months and it is also observed that there was no complete ban of the sand mining. Considering the entirety of the matter the Supreme Court upheld the decision of the National Commission in respect of the direction No.1, 2, 4 where as in respect to direction No.3 the Appellant would be required to pay a lump sum compensation of Rs. 5 lakhs to the Respondent in respect of each case. We direct that all the sums covered by the directions shall be made over within 2 months from today failing which the Respondent Complainant shall be entitled to 8% interest on the amounts in question.

Remedies Available Under Consumer Protection Act And RERA Are Concurrent

**M/s M3M India Pvt. Ltd. & Anr.v. Dr. Dinesh Sharma & Anr.<sup>347</sup>**

**Facts:** In this petition along with a batch of similar petitions, Justice Prateek Jalan was faced with the question whether proceedings under the CPA could

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<sup>347</sup> CM (M) 1244/2019 Delhi HC.

be commenced by home buyers against developers, after the commencement of RERA. The high court had decided to hear the matter filed against the order of National Consumer Disputes Redressal Commission, earlier this year. The NCDRC had decided that “remedies provided under CPA and RERA are concurrent, and the jurisdiction of the forums/commissions constituted under CPA is not ousted by RERA, particularly Section 79 thereof”. Section 79 of RERA provides that no civil court shall have jurisdiction over matters empowered to be decided by RERA under the Act and no court shall grant injunction in pursuance of any power conferred by or under this Act.

**Issue:** Whether proceedings under the CPA could be commenced by home buyers against developers, after the commencement of RERA?

**Decision:** The court was of the view that judgment *Pioneer Urban Land v. Union of India* (2019 SCCOnline SC 1005) was binding on the high court with regard to the issue in question in as much as: While it was correctly pointed out by the Respondent that the litigation before the Supreme Court principally raised the question of remedies under IBC and RERA, the issues arising out of CPA proceedings were also brought to the attention of the Court. In fact, it had recorded that “Remedies that are given to allottees of flats/apartments are therefore concurrent remedies and connected matters such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.” While examining the operation of remedies under RERA and IBC, the Supreme Court had drawn on Section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies. The citing of an example could not lead to the conclusion that the Court intended to reach a conclusion only with regard to pending CPA complaints, and not ones instituted in the future. Thereby the court concluded that “remedies available to the respondents herein under CPA and RERA are concurrent, and there is no ground for interference with the view taken by the National Commission in these matters.”

**Ansal Lotus Melange Projects Private Limited v. Punjab State Consumer Dispute Redressal Commission and Others<sup>348</sup>**

**Facts:** A complaint under Section 17 of the Consumer Protection Act, 1986, was filed by Respondents No. 2 and 3, seeking a refund of the amount of Rs. 18,11,578/- along with interest at the rate of 18% per annum, besides compensation. It is averred in the complaint that the present Petitioner/builder had come up with the project known as 'City Centre' at Kharar-Landran Road, District Mohali and had offered units/shops for sale in the said project. Requisite Cheque was submitted by the Respondents 2 and 3 to the present Petitioner in order to purchase the units/shops Possession of the unit which was to be delivered within 3 years from the date of booking/allotment, the Petitioner has claimed to have failed to hand over, not only the possession thereof within the stipulated period but it is also claimed by the Respondents that no development work was carried out by the Petitioner at the site. Complaint was resisted by the present Petitioner. The Petitioner raised an objection that respondents no. 2 and 3 were not consumers as defined under the C.P. Act, as the unit was purchased for a commercial purpose to run tuition business and not for personal use. Respondents no. 2 and 3, were also stated to be defaulters and that the alleged period of three (3) years for delivery of possession was tentative and was to run from the date of receipt of all requisite sanctions/approvals/permission from the competent authority/authorities.

Respondents no. 2 and 3, filed an execution application, wherein bailable warrants have been issued against the directors of the Petitioner company. After which writ petition has been filed seeking quashing of order passed by 'SCDRC'.

**Issue:** Whether 'SCDRC' has authority or jurisdiction to take cognizance of any matter covered under the Real Estate Regulatory Authority, Act 2013 (for short 'RERA')?

**Decision:** Court taking the view of judgement of "*Pioneer Urban Land and Infrastructure Ltd case*" held that as per Sec. 88 of RERA it that as per Sec. 88

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<sup>348</sup> MANU/PH/0356/2020.

of RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to the allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.” Also considering reference which was made by the Hon’ble Supreme Court to the proviso to Section 71(1) of the RERA in Para No. 30 of the said judgement, wherein it is observed as under:—

“That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection Fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88.”

Court held that in view of the position as above, it cannot be held that jurisdiction of the Consumer Commission under the C.P. Act is ousted with the promulgation of the ‘RERA’, so as to render the impugned orders a nullity and non-est. There is no repugnancy or conflict between the ‘C.P. Act’ and the ‘RERA’ as was argued by learned counsel for the petitioner. The remedies sought/availed by respondents no. 2 and 3 under the C.P. Act is clearly overlapping with the provisions of the ‘RERA’. Hence, in such circumstances an allottee is at liberty to avail any of the remedies available to him under the various statutes in this respect.

**Debasish Saha and Another v. Godrej Properties Limited and Another<sup>349</sup>**

**Facts:** Case of the Complainants is that by way of a tripartite agreement of nomination dated 12th December, 2011, Pallak Fashion Pvt. Ltd. nominated the Appellants/Complainants for one unit measuring 506.83 sq. ft. super built up area in tower “Prakti Plaza” at Godrej Prakti, Kolkata. The due date of possession of unit was 28th February, 2013. Though the Appellants paid Rs. 13,18,697/-, about 77% of the total cost of the flat by 28<sup>th</sup> February,

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<sup>349</sup> 2020 SCC OnLine NCDRC 82.

2013, the Respondents failed to hand over the unit within the time stipulated. Rest of the payment due was made by the Appellants and got the conveyance deed registered on 9<sup>th</sup> October, 2017. For taking possession of the unit, Respondent No. 1 insisted on signing of a waiver clause to compensate for delay in giving possession.

Aggrieved by this action of the Respondents, the Appellants preferred Complaint before the State Commission. After hearing the case, along with all the interlocutory applications, the State Commission dismissed the Complaint, finding that the Appellants/Complainants were not consumers in terms of Section 2 (1) (d) of the Consumer Protection Act, 1986. Being aggrieved by the order of state commission petitioner filed an appeal at NCDRC

**Issue:** Whether Appellant falls within the definition of the ‘consumer’ defined under sec.2(1)(d) of the Consumer Protection Act?

**Decision:** Court held that the Complainants have booked one unit measuring 506.83 sq. ft. super built up area in tower “Prakiti Plaza” in the complex Godrej Prakiti, Kolkata. Conveyance deed was also executed by Opposite Party No. 1 in favour of the Complainants but for want of certain conditionalities attached for delivery of possession, the Appellants/Complainants filed a Complaint before the State Commission.

The Appellants are father and son. Learned Counsel for the Appellant stated that the father is a retired person and the son works in Tata Consultancy Services. No proof or evidence could be furnished of their being engaged in any business or profession where the space could be used for self-employment and earning their livelihood. In the absence of any record/evidence to prove that the commercial space was purchased for earning livelihood by means of self-employment, the Complainants cannot seek refuge under the explanation provided under Section 2(1)(d) of the Act. Appellant could provide any plausible explanation as to how they are covered by the definition of Consumer as provided in the Consumer Protection Act, 1986. Section 2(1)(d) of the Consumer Protection Act, 1986. In view of the above, NCDRC find

no illegality or infirmity in the order passed by the State Commission.

Failure to provide basic infrastructure

**Unnayan Builders Private Limited, through their Managing Director, Kolkata v. Sona Bera W/o Arnab Bera.<sup>350</sup>**

**Facts:** The Complainant Sona Bera W/o Arnab Bera entered into an agreement with the Opposite Party (OP) Unnayan Builders Private Limited (Petitioner) for purchasing a residential plot. The OP-Petitioner was required to provide the basic infrastructure while delivering possession of the plot booked in a project namely 'Unnayan Garden' for a consideration of Rs.16,50,000/-.

As per the terms of the agreement, the OP was to develop the plot within a period of four years. The OP having failed to carry out the requisite development by that date, the Complainant approached the concerned District Forum by way of a consumer complaint, seeking refund of the amount paid by him, along with compensation. The complaint was resisted by the OP primarily on the ground that the Complainant had defaulted in payment of the balance instalments and therefore the complaint was liable to be dismissed. The District Forum having ruled in favour of the Complainant, the Petitioner (OP) approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, the Petitioner (OP) filed a revision petition before the National Commission.

**Issue:** Whether there was deficiency of service on part of the Opposite Party?

**Decision:** The Petitioners contended that the agreement was not one of service but a contract of sale of a plot alone. Petitioners also argued that the agreement was liable to be set aside as the Complainant had not paid the balance instalment.

The Commission observed that the non-payment of balance instalment was condoned by the Opposite Party and they had in fact not terminated the agreement. Thus, the agreement still stands. The Commission opined that

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<sup>350</sup> 2018 SCC OnLine NCDRC 1012.

the Petitioners had to build some basic infrastructure before handing over the plot to the Complainant. Thus, there was an element of service present in the agreement between the Complainant and the Opposite Party and they were deficient in providing the service. On the basis of the above discussion, the revision petition was dismissed.

Installing lifts without minimum power backup

**Sukumaran and Ors. v. Parasvnath Developers Ltd. and Ors.<sup>351</sup>**

**Facts:** Complaint is filed by the parents of Sajan, who was living in one of the apartments constructed by Parasvnath Developers (OP-1). On July 16, 2008 deceased Mr. Sajan pushed the elevator's call button from the sixth floor but realised that there was no electricity. As he climbed down the stairs and reached third floor, the power supply resumed and the lift door at that floor opened. He stepped into the lift assuming it to be in place, but fell through the shaft and sustained serious injuries. He was taken to Fortis Hospital where he died because of those injuries on 17.7.2008. Thus Complainants have claimed a sum of Rs. 2.50 crores as compensation from the opposite parties. Parasvnath Developers Ltd (OP1) which constructed the building, OTIS Elevator Co. Ltd. (OP2) the Supplier of lift, M/s. Marksmen Facilities (P) Ltd/Basundhara Properties Pvt. Ltd (OP3), an agency appointed for the maintenance of the building are Opposite Parties in this case.

Parasvnath Developers Ltd. denied negligence or deficiency on its part and has alleged that maintenance of the lift was under the charge of Basundhara Properties Pvt. Ltd. OTIS Elevator Co. said that after expiry of the free maintenance period, they had started annual maintenance of the lifts under instructions of the Basundhara Properties Pvt. Ltd., an agency appointed by Parasvnath Developers Ltd. It was admitted that there was no power back up provided for the operation of the lifts in case of emergency.

**Issue:** Whether there was deficiency in service in not providing minimum power backup?

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351 2017 SCC OnLine NCDRC 240.

**Decision:** NCDRC held that providing lifts in a multi-storied residential building by the builder without even minimum power back up is a negligent act and deficiency in the service. Such incident would not have happened if there was power backup, since the lift car would have been on the landing floor and the deceased would not have been stuck on account of power failure.

NCDRC awarded a total compensation of Rs. 50,00,000/- (Rupees Fifty Lacs), out of which Rs. 30,00,000/- shall be paid M/s. Marksmen Facilities (P) Ltd., and Rs. 20,00,000/- shall be paid by M/s. Parasvnath Developers Ltd.

Execution of conveyance deed if power of attorney has been revoked

**Nibedita Pattanayak v. Swapna Sengupta & 2 Others.**<sup>352</sup>

**Facts:** The Petitioner Smt. Nibedita Pattanayak and Respondent Jayanta Kumar Deb Biswas, being the owners of certain land, entered into a Development Agreement with Smt. Mita Ghose and executed a Power of Attorney in her favour for consideration. Smt. Mita Ghose entered into an agreement with the Complainant Smt. Swapna Sengupta, for sale of flat of the proposed building to her for a consideration of Rs. 4,50,000/-. After completion of construction, the possession of the flat was handed over to the Complainant. No Conveyance Deed however, was executed in her favour. The developer declined to execute the Conveyance Deed on the ground that Power of Attorney executed by the Petitioner in his favour had been revoked. Being aggrieved, the Complainant approached the concerned District Forum by way of a consumer complaint impeding the owners as well as the developer as the OPs in the said complaint. The complaint was resisted by the Petitioner primarily on the ground that the Power of Attorney having been revoked even before execution of the agreement in favour of the Complainant, she was not obliged to join in the execution of the Conveyance Deed. The District Forum directed all the OPs in the complaint i.e. the developer as well as the land owners to register the Deed of Conveyance in favour of the Complainant.

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352 2017 SCC OnLine NCDRC 781.

Being aggrieved from the order passed by the District Forum, the Petitioner approached the State Commission by way of an appeal. The said appeal having been dismissed, the Petitioner is before this Commission by way of revision petition.

**Issue:** Whether the developer can decline to execute Conveyance Deed?

**Decision:** It is not in dispute that a Power of Attorney in favour of the developer was executed by the Petitioner and the other co-owner of the land in question. It is also not in dispute that the said Power of Attorney was executed for consideration. In view of the provisions contained in Section 202 of Contract Act, the Power of Attorney executed for consideration could not have been revoked. Moreover, no public notice of the alleged revocation was given by the Petitioner despite the Power of Attorney executed by her being a registered document. Had a public notice been given, informing the public at large that the said Power of Attorney had been revoked, probably, the Complainant would not have entered into the transaction with the developer. Therefore, the developer as well as the land owners must necessarily join to register the Deed of Conveyance in favour of the Complainant. For the reasons stated herein above, the revision petition is accordingly dismissed with no order as to costs.

Whether an MOU is a commercial purpose under the Consumer Protection Act, 1986

**Bunga Daniel Babu v. Sri Vasudeva Constructions and Ors<sup>353</sup>**

**Facts:** The Complainant who is the land owner of three plots entered into a Memorandum of Understanding with Sri Vasudeva Constructions and Ors, on 18.07.2004 for development of his land by construction of a multi-storied building comprising of five floors, with elevator facility and parking space. Under the MOU, the apartments constructed were to be shared in the proportion of 40% and 60% between the Complainant and the Opposite Party. Additionally, it was stipulated that the construction was to be completed within 19 months from the date of approval of the plans by the Municipal

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<sup>353</sup> AIR 2016 SC 3488.

Corporation and in case of non-completion within the said time, a rent of Rs. 2000/- per month for each flat was to be paid to the Complainant. An addendum to the MOU dated 18.07.2004 was signed on 29.04.2005 which, inter alia, required the Opposite Party to provide a separate stair case to the ground floor. It also required the Opposite Party to intimate the progress of the construction to the Complainant and further required the Complainant to register 14 out of the 18 flats before the completion of the construction of the building in favour of purchasers of the Opposite Party. The plans were approved on 18.05.2004 and regard being had to schedule; it should have been completed by 18.12.2005. However, the occupancy certificates for the 12 flats were handed over to the occupants only on 30.03.2009, resulting in delay of about three years and three months. In addition, the Complainant had certain other grievances pertaining to deviations from sanction plans and non completion of various other works and other omissions for which he claimed a sum of Rs. 19,33,193/-. These claims were repudiated by the Opposite Party. A complaint was filed to the District Consumer Forum who came to the conclusion that the Complainant is a consumer within the definition under Section 2 (1)(d) of the Act as the agreement of the Complainant and the Opposite Party was not a joint venture. On appeal, the State Consumer Disputes Redressal Commission had reversed the view of the District Forum. The State Commission had opined that the claim of the Appellant was not adjudicable as the complaint could not be entertained under the Act in as much as the parties had entered into an agreement for construction and sharing flats which had the colour of commercial purpose. Thus, the State Commission concluded that the Appellant was not a consumer under the Act. The said conclusion had been given the stamp of affirmance by the National Commission. Thus, an appeal was made before the Hon'ble Supreme Court.

**Issue:** Whether the MOU entered between the Appellant and the Respondent for construction and sharing of flats can be considered as commercial purpose?

**Decision:** The appeal was allowed. It was held that the whole approach of the National Commission in affirming the order passed by the State Commission on the ground that the complaint was not a consumer as his

purpose was to sell flats and had already sold four flats was erroneous. The Appellant was neither a partner nor a co-adventurer. He had no say or control over the construction. He did not participate in the business. He was only entitled to, as per the MOU, a certain constructed area. Therefore, the Appellant was a consumer under the Act. It was directed that an appropriate adjudication had to be done with regard to all the aspects except the status of the Appellant as a consumer by the Appellate authority. Consequently, the appeal was allowed, the orders passed by the National Commission and the State Commission were set aside and the matter was remitted to the State Commission to re-adjudicate the matter treating the Appellant as a consumer.

Increase in cost of construction

**Chief Administrator, H.U.D.A. and Ors. v. Shakuntla Devi<sup>354</sup>**

**Facts:** The Complainant was allotted a particular plot, measuring 40 Marlas in Sector 8, Urban Estate, Karnal on 03.04.1987. As physical possession of the plot was not given to the Complainant by the Opposite Party, a complaint was filed before the State Commission. In the said complaint, the Complainant alleged that she had paid the full price of the plot including the enhancement fee as per the terms and conditions of the allotment letter. She averred that she was not given the possession of the plot in spite of repeated requests. The Complainant also pleaded in the complaint that the opposite party were required to complete the development work within 2 years from the date of the allotment letter and hand over the physical possession. She further stated that she wanted to construct a house and the delay in handing over physical possession of the plot resulted in additional expenditure for the building as the price of construction material increased manifold from 1988 to 1997. The Opposite Party filed a written statement in which it was stated that the Complainant was allotted the plot from the Government Discretionary Quota. The Opposite Party alleged that the Complainant did not seek delivery of possession prior to 16.07.1997. It was also stated in the written statement that an amount of Rs. 28,000/- was still outstanding. It was further alleged

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354 AIR 2017 SC 70.

that the Complainant was not interested in constructing a house and that no building plan was submitted for approval. The State Commission by its order dated 21.12.1998 held that the Respondent has established deficiency of service by the Opposite Party as there was delay in handing over physical possession of the plot. The complaint was allowed and the Opposite Party's were directed to deliver vacant physical possession of the plot, if not already done, to the Complainant within one month from the date of receipt of the order. There was a further direction to pay interest on the amount deposited by the Complainant at the rate of 12% with effect from 03.04.1989 and to pay a sum of Rs. 2 lakhs as compensation on account of escalation in the cost of construction etc. The Opposite Party's were also directed to pay Rs. 20,000/- towards compensation for monetary loss and mental harassment suffered by the Respondent. The Opposite Party's filed an appeal to the National Commission. The National Commission remanded the matter for re-consideration of compensation for escalation of cost of construction in accordance with CPWD rates. The State Commission reconsidered the matter and held that the Opposite Party's did not commence construction till 2006 with a view to get more compensation. Therefore, she was awarded a compensation of Rs. 15,00,000/-towards increase in the cost of construction. The order was confirmed by the National Commission. Thus, aggrieved by the order appeal has been made to the Supreme Court.

**Issue:** Whether it is justified in awarding Rs. 15 lakhs as compensation for escalation in the cost of construction?

**Decision:** It was held that the respondent is not entitled to such compensation awarded by the State Commission and confirmed by the National Commission. The Respondent suffered an injury due to the delay in handing over the possession as there was definitely escalation in the cost of construction. At the same time the Respondent has surely benefited by the increase in the cost of plot between 1989 to 2000. The award of interest would have been sufficient to compensate the Respondent for the loss suffered due to the delay in handing over the possession of the plot. The compensation of Rs. 15 lakhs awarded by the State Commission is excessive. Thus, the order of the State Commission dated 21.12.1998 as confirmed by the National Commission is set aside and the Appeal is allowed. No cost was allowed.

**Tamil Nadu Housing Board v. Sea Shore Apartments Owner's Welfare Association<sup>355</sup>**

**Facts:** There was an allegation of deficiency in service in housing construction, owing to the demand of additional price by Housing Board.

**Issue:** Whether the increase in price was invalid?

**Decision:** The Supreme Court held that the price quoted in initial advertisement issued for registration of intending purchasers was tentative price and since, on alteration of the Scheme, the plinth area and ground area was increased, the demand of additional price could not be considered to be arbitrary, and hence it was not deficiency in service.

Exclusion of name from allotment list

**M. S. Tewari v. Delhi Development Authority, Through its Vice Chairman<sup>356</sup>**

**Facts:** On 18.10.1979, vide his Application No. 36056, the Complainant had got himself registered with the Delhi Development Authority (DDA) for allotment of a flat under the 'New Pattern Scheme, 1979'. He deposited the registration amount of Rs. 4500/-. His Priority Number was 32919. After 23 years of registration, on 31.05.2002 the draw of lots for allotment of Middle Income Group (MIG) flats was held by the DDA for the applicants with Priority Nos. 32416 to 34055. The Complainant found that his Priority Number was not included in the draw held, as neither his name nor priority number figured in the result list for the said draw. Responding to his representations dated 13.06.2002 and 04.07.2002, the DDA included his name in the next draw held on 05.07.2002, and allotted an MIG flat, bearing No. 74, Pocket-E, Sector-17, Dwarka, Phase-II, vide Demand cum-Allotment letter dated 01.08.2002/ 09.08.2002, on cash down payment of Rs. 8,80,232/-. Since, according to the Complainant, even the basic amenities were missing in Pocket-E; the flat allotted had locational disadvantages and

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355 AIR 2008 SC 1151.

356 2016 SCC OnLine NCDRC 1512.

above all, the draw was not meant for the Registrants in his category, vide his letters dated 22.08.2002 and 05.09.2002, he requested the DDA to include his name in the next draw for allotment of another flat, in the category he was entitled to. The request was rejected by the DDA and the same was intimated by it to the Complainant, vide DDA's letters dated 07.01.2003 and 10.02.2003. After protracted correspondence between the parties, on 19.11.2004, the DDA cancelled the allotment of the flat allotted to the Complainant. He alleging deficiency in service on the part of the DDA in not including his name in the draw of lots held on 31.05.2002 and not allotting the flat in the phase/sector, where the allotments to the applicants, having priority number just preceding and succeeding to him, were made, the Complainant filed a Complaint, being Complaint Case No. 203 of 2005, before the District Forum. The Complainant, inter-alia, prayed for a direction to the DDA to allot to him an MIG flat in phase/sector in which flats were allotted to the priority numbers just preceding and succeeding to his priority number, in the draw held on 31.05.2002, by restricting its cost as charged from the allottees in the said draw and to pay him a compensation of Rs. 5,00,000/- towards mental shock, agony, huge loss and injury suffered by him.

**Issue:** Whether there was deficiency in service by the opposite party DDA?

**Decision:** The Petition was allowed; the orders passed by the Fora were set aside and the DDA was directed to deliver a peaceful and vacant possession of flat No. 84, Pocket 2, Sector 12 Dwarka, New Delhi to the Complainant on his making payment of the total cost of flat (Rs. 31,52,916/-), as demanded in terms of Demandcum-Allotment letter No. 77626, dated 13.07.2010- 19.07.2010, within two months of the receipt of a copy of this order. Since, admittedly, the flat has remained unoccupied throughout, the DDA shall ensure that it is in a perfect habitable condition, at the time of delivery of its physical possession, on a mutually agreed date and time. The Revision Petition stands disposed of in the above terms, with no order as to costs. Petition was allowed.

Refusal to allow pre-mature withdrawals

**Mrs. Adelkar Pratibha B & Ors v. Sivaji Estate Livestock and another<sup>357</sup>**

**Facts:** The Opposite Party Shivaji Estate Livestock & Farms Pvt. Ltd. invited the potential investors to invest in its Goat Farming and allied activities by purchasing units of several schemes floated by it. In the Brochure issued by it, the said Opposite Party represented to the prospective investors, inter-alia that they had arranged about 500 goats in each goat shed with 25-50 such sheds in each rearing centre; 100% of the live stocks would be insured and there would be 100% guarantee of the invested amount. It was also represented to them that the investors would have hypothetical charge on 1000 sq. ft. of land of the company and one time investment would offer consistent benefit for fifteen years, live stocks would be looked after by the experienced Vets and Professionals. The Opposite Party offered attractive returns on the capital invested in the units sold by it. It is alleged that the Opposite Party represented to the Complainants that there would be minimum expected return on the investment made by them and if the targets are achieved, they would also get additional bonus. The schemes also provided for pre-mature withdrawals by giving 45 days' notice. The case of the Complainants, who number as many as 373 is that in view of the attractive schemes offered by the Opposite Party, they invested their hard-earned savings into those schemes. Initially, the Opposite Party made payment of some instalments due to the investors under the said schemes but later on they did not fulfil the terms made by them. When the investors applied for pre-mature withdrawal of the investment made by them, the Opposite Party failed to honour its commitment.

**Issue:** Whether there was a deficiency in services by the Opposite parties?

**Decision:** The court held that the Opposite Party Shivaji Estate Livestock & Farms Pvt. Ltd., has been deficient in rendering services to the Complainants. We consequently direct the said Opposite Party to refund the investment made by the Complainants in the schemes floated by it and as detailed in Exhibit-A annexed to the complaint, along with interest on the

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357 2015 SCC OnLine NCDRC 3537.

said amount @ 9% per annum from the date of filing of the complaint till the date of payment. We also direct the said Opposite Party to pay 10% of the amount invested by the Complainants as compensation and Rs. 1,000/- each as the cost of litigation to each of the Complainants. No relief against the other opposite party is made out. The complaint stands disposed of.

Allotment of same flat twice

**Delhi Development Authority v. D.C. Sharma<sup>358</sup>**

**Facts:** Delhi Development Authority (DDA) was alleged for allotment of same flat twice, for harassing the Complainant for more than 18 years without any justification and for continuous filing of meritless petitions in different judicial forums in order to cover up its own fault and negligence. Earlier the Complainant who was allotted a flat in Narela under DDA's expandable housing scheme in 1997 had filed a complaint before District Forum for possession of the said house. The said complaint was dismissed by the Forum but in appeal State Commission ordered in Complainant's favour. The Court asked DDA to recover the damages from salaries of "delinquent officials" who had been pursuing the "meritless litigation" and also ordered that out of Rs. 5 lakh, Rs. 2.5 lakh would be given to the Complainant and rest Rs. 2.5 lakh would be deposited in the Commission's Consumer Legal Aid account.

**Issue:** Whether there was allotment of the same flat twice to the Complainant which amounted to deficiency in service by DDA?

**Decision:** NCDRC held strict stand towards frivolous and uncalled for litigations and said that if any litigant approaches the court of equity with unclean hands, suppress the material facts, make false averments in the petition and tries to mislead and hoodwink the judicial forums then his petition should be thrown away at the threshold. The Court was hearing a revision petition filed by DDA challenging the order of Delhi State Consumer Disputes Redressal Commission vide which DDA was directed to return back all the amount of Rs. 30,000/- received by it from the Complainant and to provide the Complainant another flat of the same description, on the

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358 2014 SCC OnLine NCDRC 4.

same condition in the same locality or nearby. The DDA was further directed that in case no flat is available, DDA will pay, Rs. 30,00,000/- to the Complainant because of sky rocketing prices, since the flat was booked for Rs. 5,03,348/- in the year 1996-1997. Rendering relief to Complainant, NCDRC also held, We find no error/ irregularity in the exercise of jurisdiction by the State Commission in the impugned order passed by it.

Execution of sale deed

**Rajubhai Tank v. Bindraben Bharatkumar Mavani<sup>359</sup>**

**Facts:** While passing strictures against a land developing firm, its two directors and agent, who had failed to execute sale deed in favour of purchasers of plots even after a lapse of ten years, NCDRC had ordered the firm to execute sale deed within 180 days. The Court was hearing a bunch of 17 revision petitions filed by the developers, challenging the order of State Commission rendering relief to the purchasers. Earlier the developers who used to purchase the agricultural land and convert the said land into non-agricultural for residential purpose, purchased one such piece of agricultural land and issued an advertisement for selling plots of 125 sq meters each to buyers in 36 instalments.

**Issue:** Whether agricultural land can be converted in non-agricultural land and can sell as plot?

**Decision:** After perusing all the evidences including the order of High Court, NCDRC said it was crystal clear if the premium was paid, land would become non-agricultural and there would not be any other opinion with regard to this aspect. The Petitioners should have anticipated at the time of acquiring this land in the year 2004 or prior to that, what would be the condition/prevailing situation. They should have made it clear in the allotment letter that this premium to the collector would have to be paid by the consumers. The said condition was not shown to us. After keeping the money of the people for 10 years, the developers want to return the same, with interest @ 9%. They have not shown the willingness that they want to pay the difference in the

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<sup>359</sup> 2014 SCC OnLine NCDRC 9.

rates prevailing in the year 2004 and 2014. The consumers cannot purchase a plot like this, after the expiry of 10 years for a sum of Rs. 2,00,000/- each.” Considering the act of developers an unfair trade practice, NCDRC directed developers to get the agricultural land into non-agricultural land within 90 days and to execute sale deed within 180 days. It also imposed costs upon developers of Rs. 10,000/- be paid to each of the purchasers.

Compensation for harassment and mental agony

**Subhash Chander Mahajan & Anr. v. Parsvnath Developers Ltd. Through its Managing Director<sup>360</sup>**

**Facts:** The Complainants booked a Three-Bed Room residential Flat No. 1402, measuring 1855 sq.ft in the Parsvnath Privilege and were issued a provisional allotment letter dated 23.02.2007 on agreement that the flat would be completed within a period of 36 (thirty-six) months from the date of commencement of construction. It was also agreed that if there was delay in construction of the flat, beyond the period, as stipulated, the Parsvnath Developers/OP would pay to the Complainants Rs. 5/- per sq.ft, per month, for the period of delay of the agreement. The construction of the said premises was stopped in January, 2008 for the reasons known to the OP. The company admitted that there had been a delay in the construction of the project. The Complainant wrote a number of letters to the Parsvnath Developers requesting it to explain the status report of the project. The Complainant contended that the OP is liable to pay the loan interest @ 2400 p.a. as calculated from July, 2011, in the sum of Rs. 80,74,423/- besides the principal amount of Rs. 50,708,998/-. The OP has caused mental agony and harassment in not handing over possession of the flat to the Complainants and therefore, is also liable to pay Rs. 20.00 1akhs towards damages.

**Issue:** Whether the Opposite Party is liable to pay the loan interest @ 2400 p.a. besides the principal amount as well as Rs. 20.00 1akhs towards damages?

**Decision:** The Commission held that the Complainants cannot claim interest @ 2400 p.a. since they're bound by the agreement entered into between

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<sup>360</sup> 2014 SCC OnLine NCDRC 11.

them and the OP. However, the Commission relied on *K.A. Nagamani v. Karnataka Housing Board*, Civil Appeal Nos. 6730-31 of 2012, where the Apex Court had granted interest @ 1800 p.a., wherein the money in respect of the flat was returned. There has been a huge delay of four years in handing over the possession of the premises in dispute with the OP making profits for itself at the expense of others. Their harassment and mental agony cannot be equated by payment of a few peanuts. The OP has played fast and loose with the consumers. Thus, the principal amount plus interest @1890 p.a. plus few lakhs of compensation will squarely bring the cases within our jurisdiction and therefore, we decide this point in favor of the complainants and against the OP.

Failure to deliver possession as an unfair trade practice

**Emaar MGF Land Limited & Anr.v. Karnail Singh<sup>361</sup>,**

**Facts:** The representative of the Appellants induced the Respondents/Complainants to purchase a plot in its Project who assured the Respondents that development activity at the site was in full swing and if they booked the plot, the possession thereof complete in all respects would be handed over to them, within a period of 18 months, from the date of execution of the Plot Buyers Agreement. On such assurances, Respondents applied to the appellants for allotment of a residential plot and paid a sum of Rs. 35 lakhs, as booking amount on 12.02.2011. Thus, after discount of Rs.1,10,000/-, the total sale consideration, in the sum of Rs. 65,30,250/-, was required to be paid by the respondents, towards the said plot. Despite getting part payment till the month of May, 2011, the appellants failed to ensure the execution of the Plot Buyers Agreement, in the absence whereof, the Bank concerned refused to sanction the loan which was required by the Respondents. When the Appellants sent a copy of the Plot Buyers Agreement, the Respondents on going through the terms and conditions, were shocked to see that the same were favorable to the Appellants Party and their rights had been totally ignored. In order to avoid cancellation of the plot and forfeiture of 15% of the total sale consideration, the Respondents

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<sup>361</sup> 2014 SCC OnLine NCDRC 332.

signed the Plot Buyers Agreement and sent the same to the Appellants. When physical possession of the plot in question complete in all respects, was not delivered to the Respondents by the stipulated date, they visited the site and found that there was no development in the area, in which the plot was allotted. The Respondents made number of orals well as written requests to the Appellants to deliver legal physical possession of the plot complete in all respects, but it failed to do so. Since the Appellants had not delivered the possession of the plot, the Respondents were not able to construct house thereon and reside therein causing unnecessary financial burden and a lot of mental agony and physical harassment on account of non-delivery of physical possession of the plot.

**Issue:** Whether the aforesaid acts of the appellants amounted to deficiency in rendering service, as also indulgence into unfair trade practice?

**Decision:** The Appellants aggrieved by the decision of the State Commission filed an appeal in the National Commission along with an application seeking condemnation of delay of 20 days. For the reasons mentioned in the application, since there is delay of 20 days only, the same is condoned by the Commission. The Commission further held that the Appellants themselves are not sure as to by which date they will be able to hand over the possession of the plot to the Respondents and, after grabbing 95% of cost of plot are sitting over it, whereas Respondents are running from pillar to post to get their hard earned money back. Therefore, the act of the Appellants in asking the Respondents to pay a sum of Rs. 55 lakhs as booking amount and Rs. 5.78 lakhs as part payment towards the provisional allotment in the year 2011, without giving them any firm date of handing over of the possession of the plot is a Deceptive Practice which falls within the meaning of unfair trade practice as defined under the Consumer Protection Act, 1986. By not indicating the true picture with regard to their project to the Respondents, the Appellants induced them to part with their hard earned money, which also amounts to unfair trade practice. Moreover, the Appellants by not delivering the legal physical possession of the fully developed plot to the Respondents till date, even after having received more than 95% of the price thereof, are not only deficient in rendering service but are also guilty of indulging into unfair trade practice. Such type of unscrupulous act on the

part of Appellants/builders should be dealt with heavy hands, which after grabbing the money from the purchasers enjoy and utilize their money but does not hand over the plot, on one pretext or the other. It is well settled that no leniency should be shown to such type of litigants who in order to cover up their own fault and negligence, go on tiling meritless appeal in different floras. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the Opposite Party of the fruits of the decree must be dealt with heavy hands. The Commission calling the present appeal a gross abuse of process of law dismisses the same with punitive damages of Rs. 5,00,000/-.

Poor quality of construction

**M/s Shreenath Corp. & Ors. v. Consumer Education & Research Society & Ors.<sup>362</sup>**

**Facts:** Shreenath Corporation had constructed a building and had handed over possession of the flats in 1992. Within nine years of purchase, a portion of the building collapsed in January 2001 due to poor quality of construction. Several flat purchasers were killed while others sustained injuries. With the help of Consumer Education and Research Society (CERS), a complaint was filed against the builder, seeking compensation. The commission upheld the complaint and directed the firm to pay compensation ranging from Rs. 1.5 lakh to Rs. 18.6 lakh, along with 9% interest. The builder appealed to the national commission. The Consumer Protection Act (CPA) requires a party challenging the order to deposit a certain amount of money when the appeal is lodged. In case of appeals to the national commission, this amount is 50% of the amount awarded or Rs. 35,000/- whichever is lower. Accordingly, the builder deposited Rs. 35,000/- per appeal. On the builder's application for an interim stay, the national commission granted conditional stay subject to the builder depositing 50% of the principal amount (excluding the interest component), within three months. The builder challenged this interim order before the Supreme Court. The builder argued that since Rs. 35,000/- had already been deposited at the time of filing the appeal in accordance with

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<sup>362</sup> (2014) 8 SCC 657.

the provisions of the CPA, the national commission had no authority to give a direction to deposit any further amount.

**Issue:** Whether the interim order by the National Commission granting conditional stay to the appellant is within its jurisdiction?

**Decision:** The Supreme Court observed that the deposit of Rs. 35,000/- is a pre-deposit payable as a condition precedent to filing the appeal. The objective of this pre-deposit is to avoid frivolous appeals. At the time of hearing the appeal, the commission would have the power to pass suitable interim orders. The commission could exercise its discretion while passing such interim orders to either grant a total stay, or a conditional stay, or refusal to grant stay. The Supreme Court also observed that the amount payable as a pre-deposit and that which is payable under interim order occur at two different stages of the proceedings. The pre-deposit is payable at the time of filing the appeal and has no link with the merits of the dispute. In contrast, the direction to make a further deposit is passed during the hearing of the application for interim stay, and is determined on a consideration of the merits of the appeal, the balance of convenience, and whether irreparable loss would be caused to a party seeking a stay. The Supreme Court accordingly concluded that the interim order passed by the national commission was well within its jurisdiction, and dismissed the builder appeal.

Unfair trade practice in booking of apartment

**Classic Kudumbam Retirement Community v. Mr. S.P. Sundaram and others<sup>363</sup>**

**Facts:** The Complainants/Respondents entered into an agreement (Deed of License) for booking an apartment with the Classic Kudumbam Retirement Community, the Opposite Parties, by paying Rs. 7 lakhs. The Complainant No.1 wrote letters and expressed his dissent and grievance about the functioning and management of OP. Therefore the OPs, terminated the contract, and the Complainants, under protest, vacated the premises of OP, The Complainant -1 wrote a letter to OP for refund of the deposited amount,

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<sup>363</sup> Revision Petition No. 4695/2013 (NCDRC).

but the OPs declined, to pay the same. Therefore, alleging deficiency in service by OPs, the Complainant filed a Complaint before the District Consumer Disputes Redressal Forum claiming refund of the amount paid, along with compensation. The District Forum, after considering the evidence, held the OP liable for deficiency in service and directed the OPs to refund Rs. 6,50,000/-, along with compensation in the sum of Rs. 20,000/- Aggrieved by the order of District Forum, the OP preferred an appeal before State Consumer Disputes Redressal Commission. The State Commission dismissed the appeal. Hence, the OP filed the revision petition.

**Decision:** The Commission held that the OP is deficient in service and is liable for unfair trade practices. It has caused harassment and mental agony to the very old Senior Citizens, who deserve, just and fair compensation. The Commission was surprised to note that both the fora below allowed the payment of Rs. 6,50,000/- but, ignored awarding the interest on it. Therefore, dismissed this revision petition by modifying the order of State Commission, as the OPs are directed to pay Rs. 6,50,000/- along with the interest @ 9% pa, from 4/6/2005 till. Further, the OP is directed to pay Rs. 20,000/- as costs to the Complainant within 90 days.

#### Allotment of land under specific schemes

#### **Chandigarh Housing Board v. Avtar Singh and others<sup>364</sup>**

**Facts:** With a view to promote private housing and optimum utilisation of the land in Chandigarh by constructing multi-storeyed structures, the Administrator, Union Territory, Chandigarh framed a scheme called “Chandigarh Allotment of Land to Co-operative House Building Societies Scheme, 1991” (for short, ‘the 1991 Scheme’) for allotment of land to Co-operative House Building Societies (for short, ‘the Societies’) through Chandigarh Housing Board (for short, ‘the Board’). The opening paragraph of the 1991 Scheme and Clauses 3, 4 and 6 to 12.

**Issue:** Whether the scheme had been faithfully implemented?

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<sup>364</sup> AIR 2011 SC 130.

**Decision:** The National Commission has held that by making applications for allotment of land, the Societies will be deemed to have hired or availed the services of the Chandigarh Administration and the Board in relation to housing construction. “If the scheme had been faithfully implemented and land had been allotted to the Societies, their members would have been the Actual and real beneficiaries. Therefore, they were certainly covered by the definition of ‘consumer’ under Section 2(1)(d)(ii), the second part of which includes any beneficiary of the services hired or availed for consideration which has been paid or promised or partly paid and partly promised. As a sequel to this, it must be held that the members of the Societies had every right to complain against illegal, arbitrary and unjustified forfeiture of 10% earnest money and non refund of 18% interest” The judgment truly upholds the aims and objectives of the Consumer Protection Act and ensures that innocent consumers are protected against unscrupulous land sharks and arm-twisting agents and companies.

**U. T. Chandigarh Administration & Another v. Amarjeet Singh & Others<sup>365</sup>**

**Facts:** Purchasers of plots on existing sites filed Complaints alleging delay in the provision of amenities. Respondents 1 to 4 were the successful bidders in regard to plot No. 173 in Sector No. 39C & D at the auction held on 18.12.1996. The lease premium bid offered by them was Rs. 20,45,000/-. The acceptance of the bid cum confirmation of the lease of the plot was communicated to respondents 1 to 4 by letter dated 19.5.1997 (for short ‘letter of allotment’) enclosing therewith a letter offering possession of the leased site. The said letter of allotment acknowledged the receipt of Rs. 511,250/- towards 25% of the premium and permitted the Respondents to pay the balance 75% of the premium with 10% interest thereon in 3 equated installments of Rs. 6,16,736/- on 18.12.1997, 18.12.1998 and 18.12.1999. It also required the Respondents to pay annual ground rent of Rs. 51125/- during the first 33 years of lease. The letter of allotment set out and reiterated the terms and conditions of lease and required the Respondents

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<sup>365</sup> AIR 2009 SC 1607.

to enter into a lease deed within six months and take possession of the site before the lease deed is executed.

**Issue:** Whether the plots can be distinguished from those in a layout proposed to be developed?

**Decision:** The Supreme Court distinguished plots on existing sites from those in a layout proposed to be developed over time, and held that for the former, there was no statutory requirement or assurance of providing civic amenities. Further, the contract was for lease/sale of immovable property, not for the sale of goods or for the hire of services, so the Complainants could not be considered to be consumers within the meaning of the Consumer Protection Act.

Builder commits breach of obligations

**Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd.**<sup>366</sup>

**Facts:** Appellant entered into a collaboration agreement with the Respondent for construction of an apartment building and for sharing of the constructed area; there were several shortcomings in the construction and the violations of sanctioned plan and the appellant asked for rectification.

**Issue:** Whether the builder has committed breach of his obligations?

**Decision:** The Supreme Court held that a complaint will be maintainable where the owner/holder of a land who has entrusted the construction of a house to a contractor, has a complaint of deficiency of service with reference to the construction and where the purchaser or intending purchaser of an apartment/flat/ house has a complaint against the builder/developer with reference to construction or delivery or amenities. It further held that where the builder commits breach of his obligations, the owner has the right to enforce specific performance and/or claim damages by approaching the Civil Court or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service-provider.

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<sup>366</sup> (2008) 10 SCC 345.

Whether Complainant is a consumer under Consumer Protection Act, 1986

**Sujit Kumar Banerjee v. Rameshwaran<sup>367</sup>**

**Facts:** The case involved a complaint against a builder. The Supreme Court relied on *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd.*, (2008) 10 SCC 345, and held that the agreement between parties was not a joint venture agreement but an agreement for construction of residential building and delivery of agreed percentage of constructed area to land owners. It further held that the Appellant is a consumer and the respondent builders are service providers, so the complaint was maintainable.

Treatment of re-allottees as original allottees

**Haryana Urban Development Authority v. Raje Ram<sup>368</sup>**

**Facts:** This was a batch of cases involving re-allotment of plots. The re-allottees filed complaints after the transfer of the plots in their names on the ground of delay in receiving possession.

**Issue:** Whether the re-allottees could be treated at par with the original allottees?

**Decision:** The Supreme Court held that re-allottees could not be treated at par with the original allottees who had to face harassment and mental agony on account of the delay in possession. The original allottees had accepted the delay and the re-allottees were aware that time was not of the essence of the contract. Hence, relying on *HUDA v. Darsh Kumar* [III (2004) CPJ 449 (SC)], the Supreme Court held that the re-allottees were.

Provision of plot of irregular shape

**Haryana Urban Development Authority v. Dr. Maya Vaid.<sup>369</sup>**

**Facts:** The Complainant alleged that the plot allotted to him by HUDA was of an odd shape and in excess of the area applied for.

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367 AIR 2009 SC 1188.

368 AIR 2009 SC 2030.

369 II (2009) CPJ 348 (NC).

**Issue:** Whether or no HUDA was at fault for allotting a plot of irregular shape?

**Decision:** The Commission held that HUDA was clearly at fault as it had allotted a plot of irregular shape, and ordered it to return the purchase money on the excess area as well as pay interest on the amount for the delay of 7 years.

Refusal of permission to file composite complaint

**Vikrant Singh Malik v. Supertech Limited<sup>370</sup>**

**Facts:** The complaint was filed before NCDRC by 26 flat buyers, who had booked flats in a residential project named Oxford Square of the first Respondent at Sector GH-06, 16B, Greater Noida, Uttar Pradesh. An application under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act was filed on behalf of the Complainants to enable them to pursue the complaint jointly on the ground that the relief sought by the 26 Complainants claimed a commonality of interest between them on the basis of their grievances against the Respondent. The NCDRC came to the conclusion that the application was not maintainable under Section 12(1)(c) of the Act observing that there was nothing common between the complaints in terms of the date of the agreement, cost and size of the flats, and the compensation claimed. An appeal is filed against this order.

**Issue:** Whether a complaint under Section 12(1)(c) of the COPRA is maintainable in a case of allotment of several flats in a project where the purchases are made on different dates and/or the agreed cost of the flat is not identical in all the purchases.

**Decision:** The SC upheld the decision of the NCDRC and held that the application that was filed on behalf of the Appellants purportedly under Section 12(1)(c) of the Act was not maintainable having regard to the frame of the complaint, the nature of the pleadings and the reliefs that were sought. The Court observed that the pleadings in the complaint and the application do not evince any intent to present the complaint for on or behalf of the

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<sup>370</sup> (2020) SCC OnLine SC 702.

numerous consumers who share the same interest. The application only seeks to highlight the grievance of 26 Complainants. They do not profess to possess a representative character, which is an essential ingredient of Section 12(1)(c). In this context, the application though styled as one under Section 12(1)(c) was not referable to that provision. The essential elements of an application under Section 12(1)(c) were not established before the NCDRC and therefore, it cannot be maintained.

Compensation for not being provided “extra facilities on extra sum”

**Debashis Sinha v. RNR Enterprises<sup>371</sup>**

**Facts:** Complainants purchased some flats based on the brochure and advertisement published by the developers. In spite of several requests and demands, the developers failed to provide the amenities and facilities assured by them. They also failed to provide a completion certificate which is a statutory requirement. These were clearly unfair trade practices according to the Complainant.

**Issue:** Whether the Complainants would be entitled to any compensation on account of non-provision of common amenities and facilities?

**Decision:** The court held that the Complainants failed to establish their complaint. As per the conveyance deed and the agreement for sale, it is quite clear that the extra facilities that the Complainants are demanding can be availed by paying some extra amount as is mentioned in the agreement for sale. Certain extra facilities have already been provided but if the Complainant want to access more amenities, then as per the agreement for sale, they would have to pay extra. The court held that even though the brochure and advertisement promised several amenities and facilities, the Complainants, in their complaint, have stated that they purchased the flats after due consideration. If this is the case, then the Complainants ought to have known what they were purchasing. However, the court observed that this was an unfair trade practice on part of the developer. With regard to the completion certificate, the court held that it was a fault on the part of both the parties

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<sup>371</sup> 2020 SCC OnLine NCDRC 429.

and both of them were in violation of law. It is statutory requirement to provide a completion certificate but it is also a requirement that the purchaser does not occupy the premises in the absence of a completion certificate. Since the Complainant occupied the premises without a CC, the court did not attribute any deficiency in service to the developer.

## TELECOM SECTOR

The telecommunications sector is concerned with providing telephone, television broadcasting and internet services all over the country. As per official statistics and reports, India has a vast telecom network. As of 31<sup>st</sup> October 2018, there were nearly 1.192 million telephone subscribers over the country, which is the 2<sup>nd</sup> largest subscriber base worldwide.<sup>372</sup> Further, the current internet user base of 500 million is expected to reach 627 million by the end of 2019<sup>373</sup> and is estimated to increase by 500 million over the next five years.<sup>374</sup>

With a rise of e-governance and initiatives such as the Digital India, Aadhaar, BHIM etc.<sup>375</sup>, the telecom sector is rapidly expanding. The three aims of the National Digital Communications Policy, 2018 – Connect India, Propel India and Secure India which seek to develop infrastructure for digital communications, enable innovation in telecommunications and ensure the safety of digital communications<sup>376</sup> respectively show that the telecom sector will only continue to expand and become a crucial part of public life.

## CONSUMER ISSUES

Broadly, the problems faced by the consumers are divided into three parts: TSPs, DTH/cable television and ISPs. These are concerned with issues arising

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372 Telecom Regulatory Authority of India, 'Press Release No. 01/2019' (2 January 2019) <<https://main.trai.gov.in/sites/default/files/PRNo01Eng02012019.pdf>> accessed 14 July 2019.

373 KantarIMRB, 'Digital adoption & usage trends' 5 <[https://imrbint.com/images/common/ICUBE%20A2\\_2019\\_Highlights.pdf](https://imrbint.com/images/common/ICUBE%20A2_2019_Highlights.pdf)> accessed 14 July 2019.

374 IBEF, 'Telecom Industry in India' <<https://www.ibef.org/industry/telecommunications.aspx>> accessed 14 July 2019.

375 UNDP (2015), 'India in e-Governance Development Index: e-Government Initiatives' <[https://digital.india.gov.in/writereaddata/files/whats\\_new\\_doc/Presentation-UNDP-26.08.2015.v5.pdf](https://digital.india.gov.in/writereaddata/files/whats_new_doc/Presentation-UNDP-26.08.2015.v5.pdf)> accessed 14 July 2019.

376 National Digital Communications Policy 2018.

due to tariffs, interconnection, spectrum, licensing, internet, VAS, mobile number portability, television and radio broadcasting.

#### TSPs

In 2017, TRAI released a report on recommendations for addressing consumer grievances in the telecom sector. The most common grievances are as follows<sup>377</sup>:

1. Billing related problems – inaccurate billing, change in tariff plain without consent, delay in tariff packs, billing despite discontinuation of services etc.
2. Mobile Number Portability – rejection of porting, delay in porting, non-generation of UPC
3. Fault Repairs – delay in repairs
4. Connection/Disconnection of Services – delay in subscriber verification, refusal of request for disconnection etc.
5. VAS (Value Added Services) – activation of VAS without consent
6. Broadband Speed – lack of broadband speed

#### DTH/Cable Television

There are two major regulations which address the common grievances faced by consumers – The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017<sup>378</sup> and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017.<sup>379</sup> The common grievances are as follows:

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<sup>377</sup> Telecom Regulatory Authority of India, ‘Recommendations on Complaints/Grievances Redressal in the Telecom Sector’ <[https://main.trai.gov.in/sites/default/files/Recommendations\\_ComplaintsGrievance\\_10032017.pdf](https://main.trai.gov.in/sites/default/files/Recommendations_ComplaintsGrievance_10032017.pdf)> accessed 14 July 2019.

<sup>378</sup> Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017.

<sup>379</sup> Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017.

1. Lack of choice given to the consumer about packages of television channels due to discriminatory and exclusive agreements between distributors and broadcasters.
2. Being charged extra for new connections and incorrect billing.
3. Inability to have personalised packages for channels.
4. Delay in discontinuation of services.
5. Delay in installation of set top box or installation of poor-quality equipment.
6. Lack of platform for raising grievances.

#### ISPs

The Quality of Service of Broadband Service Regulations, 2002<sup>380</sup> cover a lot of common grievances:

1. Extremely low broadband speed which means that the internet cannot be accessed or used.
2. Delay in service activation time.
3. A lot of time taken for fault repairs.

#### **TRAI and TDSAT**

The Telecom Regulatory Authority of India Act, 1997 provided for the establishment of the Telecom Regulatory Authority of India (TRAI for the purpose of regulating the telecom sector of India)<sup>381</sup> and an amendment passed in 2000 provided for the establishment of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for resolving disputes between consumers and service providers relating to the telecom sector.<sup>382</sup>

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380 Quality of Service of Broadband Service (Regulations) 2002.

381 Telecom Regulatory Authority of India Act, 1997, s 3.

382 Telecom Regulatory Authority of India Act, 1997, s 14.

TRAI seeks to ensure through policies, directives and notifications that the Indian telecom sector facilitates free and fair competition among service providers and protects the rights of consumers. A wide range of subjects, ranging from tariff, interconnectivity to quality of services are dealt with by TRAI.<sup>383</sup>

TDSAT provides for pre-litigation mediation between the parties to the disputes as a means for amicable resolution. A nominal fee of Rs. 1000/- is to be paid and the TDSAT provides a trained mediator to the parties.<sup>384</sup> Alternatively, parties can always initiate proceedings before the TDSAT as per the provisions of the Telecom Disputes Settlement & Appellate Tribunal Procedures, 2005.<sup>385</sup>

## CASES

### Negligence resulting in deficiency of service

#### **Idea Cellular Ltd. v. Angad Kumar<sup>386</sup>**

**Facts:** The Idea Cellular has launched the scheme know as ‘Tyoharan Ki Saugat’ for the group of eligible subscribers between 22/10/2012 to 24/10/2012. In order for a subscriber to be eligible for the scheme, it was necessary that the participant was the ‘rightful owner/user of the pre-paid mobile connection of Idea, registered in UP telecom circle and in whose name the mobile connection is active. On 30/11/2012 Angad Kumar the Respondent receive a message on his Mobile number that you had won an Alto Car in pursuance of the aforesaid scheme. The Respondent approached the office of the Petitioner for the delivery of the said car but the Respondent not provided an Alto Car. The Respondent filed a Consumer Complain on 06/04/2013 before the District Forum, Gorakhpur, claiming the Alto Car

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383 Telecom Regulatory Authority of India, ‘History’ <<https://main.trai.gov.in/about-us/history>> accessed 14 July 2019.

384 Telecom Regulatory Authority of India, ‘Introduction to the Mediation Centre of TDSAT’ <<http://www.tdsat.gov.in/admin/introduction/uploads/Introduction%20to%20Mediation%20Centre%20TDSAT%202018.pdf>> accessed 14 July 2019.

385 Telecom Disputes Settlement & Appellate Tribunal Procedures 2005, s 4.

386 2018 SCC OnLine NCDRC 1278.

or its value along with the compensation of Rs. 10,000/- and Rs. 5,000/- as litigation cost. The contention of the Petitioner is that on the same date after some time a revised message was sent to this number as well as to others stating that earlier sent message be ignored. It was also stated that this number was not registered in the name of the Complainant rather it was registered in the name of Mr. Lal Bihari and therefore, the Complainant was not entitled to file this complaint. The District Forum allowed the complaint and directed the OP to pay the claimed price of the Alto car along with compensation of Rs. 5,000/- plus cost of litigation of Rs. 2,000/- within a period of one month, failing which 6% p.a. interest was payable till actual payment. Aggrieved by the order of the District Forum, the OP preferred an appeal before the State Commission. The State Commission upheld the order of the District Forum except the order relating to Rs. 5,000/- to be paid to the Complainant as compensation which was set aside. Hence the present revision petition.

**Issue:** Whether the Petitioner is negligent in his service?

**Decision:** The National Commission observed that the mobile number of the Complainant was in the list of competitors and could have been winner. After receiving the message of winning the Alto car, it is obvious that the Complainant must have taken this message to be true and after he did not receive any revised message as he claims, denying him Alto car by the Petitioner would really have caused harassment and mental trauma to a great extent. The action of the Petitioner company would definitely amount to causing undue harassment and mental agony and shattering of expectation of the Complainant. Due to this negligence of the Petitioner company, the Complainant is entitled to appropriate compensation for the mental trauma, harassment and shattering of expectation, if not a car. Hence the revision petition is partly allowed and order of the District Forum stands modified to the extent that instead of Alto car or its price the Petitioner company shall be liable to pay Rs. 1,00,000/- to the Complainant. Consequently, the impugned order of the State Commission also stands modified. The amount may be paid within a period of 45 days from the date of this order, failing which the amount of Rs. 1,00,000/- would attract interest @ 10% p.a. from

the date of this order till actual payment. A cost of litigation of Rs. 5,000/- is also ordered to be paid to the Complainant by the Petitioner.

**Dr. Uttamkumar Samanta v. Vodafone East Limited & 4 Ors.<sup>387</sup>**

**Facts:** The Complainant's purchased a post-paid internet service plan from the Respondent No. 2 authorised by Respondent No.1, on purchase of the same the Respondent No. 1 & 2 gave a Data Sim card and a device for Rs. 5,500/- but never informed him that all transactions are final and no refund would be made. On payment of Rs. 5,000/- on 07.05.2013, they issued him a printed receipt. On 08.05.2013 the data card was activated and internet service was started. On 09.05.2013 a bill was sent by email. On 10.05.2013 internet service was suddenly disconnected and stopped without any intimation or message to him. Due to such sudden disconnection, the Complainant suffered irreparably and for such deficiencies he prayed for compensation of Rs. 99,95,500/- before the state commission. The Respondent No.1 & 2 contended that in the absence of a valid proof of residence they could not activate the connection. The connection was availed by the Complainant on 08.05.2013 and the first address verification was made on 09.05.2013 and as the Complainant was not residing in the given address, the connection was not activated.

The State Commission observed during the arguments that the Respondent have not only committed a deficiency in service but also adopted unfair trade practice. He further submitted that Respondent No.3 & 5 (Secretary Government of India Telecommunications, Chairperson TRAI and Secretary Government of India Ministry of Corporate Affairs) are equally responsible because they should take the appropriate measure against the Respondents for adopting unfair trade practice in promoting their business. The State commission dismissed the complaint on the ground that the amount alleged by the Complainant was only Rs. 5,500/- but he sought the disproportionate claim of Rs. 99,95,500/- with cost of Rs. 10,000/- to be paid to the State Consumer Welfare Fund within 30 days, failing which the amount shall carry an interest @9% p.a. till its realization. Aggrieved by the decision of the

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<sup>387</sup> 2018 SCC OnLine NCDRC 402.

State Commission the Complainant preferred the Appeal before this Commission.

**Issue:** Whether the complaint filed by the Petitioner is frivolous and vexatious?

**Decision:** The National Commission observed that the aggregate amount paid for the internet service was Rs. 5,500/- and sought compensation of Rs. 99,95,500/- which was on the face of it disproportionately high and the component of the total compensation claimed is again unreasonable and albeit absurd. It is clearly evident that the Complainant is attempting to misuse the statutory processes provided for better protection of interest of the consumers to attempt wrong gains and to create nuisance value qua the Respondents. The appeal is dismissed as it is clearly frivolous and vexatious with Cost of Rs. 500/-.

**General Manager, Telecom v. M. Krishnan and Another<sup>388</sup>**

**Facts:** This was a Special Appeal filed to the Supreme Court. The dispute in this case was regarding non-payment of telephone bill for the telephone connection provided to the first Respondent and for the said non-payment of the bill the telephone connection was disconnected. Aggrieved against the said disconnection, the first Respondent filed a complaint before the District Consumer Disputes Redressal Forum, Kozhikode. the Consumer Forum allowed the complaint and directed the Appellant herein to re-connect the telephone connection to the first Respondent and pay compensation to him. The Appellant filed a writ petition before the Kerala High Court challenging the jurisdiction of the consumer forum, which was dismissed. The Writ Appeal was then dismissed by a Full Bench of the Kerala High Court. The Supreme Court held that when there is a special remedy provided in Section 7-B of the Indian Telegraph Act, 1885 regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act, 1986 is by implication barred. Rule 413 of the Telegraph Rules provides that

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<sup>388</sup> AIR 2010 SC 90.

all services relating to telephone are subject to Telegraph Rules. A telephone connection can be disconnected by the Telegraph Authority for default of payment under Rule 443 of the Rules.

**Decision:** The Supreme Court further held that the special law viz. the Telegraph Act will override the general law that is the Consumer Protection Act. The Court agreed with the decision in (1995)2 SCC 479 which stated that the National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents. Thus, the appeal was allowed and the order and judgment of the High Court was set aside.

Validity of Telecom Consumers Protection (Ninth Amendment) Regulations, 2015

**Cellular Operators Association of India and others v. Telecom Regulatory Authority of India and others<sup>389</sup>**

**Facts:** A group of appeals were filed by various telecom operators who offer telecommunication services to the public generally. Various writ petitions were filed in the Delhi High Court challenging the validity of the Telecom Consumers Protection (Ninth Amendment) Regulations, 2015, notified on 16.10.2015, (to take effect from 1.1.2016), by the Telecom Regulatory Authority of India. The aforesaid amendment was made purportedly in the exercise of powers conferred by Section 36 read with Section 11 of the Telecom Regulatory Authority of India Act, 1997. By the aforesaid amendment, every originating service provider who provides cellular mobile telephone services is made liable to credit only the calling consumer (and not the receiving consumer) with one rupee for each call drop (as defined), which takes place within its network, up to a maximum of three call drops per day. Further, the service provider is also to provide details of the amount credited to the calling consumer within four hours of the occurrence of a call drop either through SMS/USSD message. In the case of a post paid consumer, such details of amount credited in the account of the calling consumer were to be provided in the next bill. Thus the Telecom Consumers

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<sup>389</sup> AIR 2016 SC 2336.

Protection (Ninth Amendment) Regulations, 2015 on Quality of Service Regulations, 2009, Penalty for Call drop-TRAI notified 2015 Regulation whereby, every originating service provider who provides cellular mobile telephone services is made liable to credit the calling consumer with one rupee for each call drop, that takes place within its network, up to a maximum of three call drops per day. Assailing validity of said 2015 Regulation, several writ petitions were filed by telecom operators before High Courts. However, High Courts held that power vested in TRAI u/s. 36(1) to make regulations is wide and pervasive, and that as there could be no dispute that 2015 Regulation was made to ensure quality of service extended to the consumer by service provider, it would fall within S. 36(1) read with S. 11(1)(b)(v) of the Act. Further, it was also held by High Courts that the 2% standard imposed by 2009 Regulation is distinct and different from compensation provided to consumers for dropped calls under 2015 Regulation. High Court vide impugned judgment, validity of 2015 Regulation was upheld and dismissed writ petitions. Hence, the appeal before the Hon'ble Supreme Court was filed.

**Issue:** Whether TRAI notification 2015 Regulation on Call drops was valid & upheld?

**Decision:** Thus it was held that, 2015 Regulation is not referable to S.11(1)(b)(i) and (v) of the Act in as much as it has not been made to ensure compliance of the terms and conditions of the licence nor has it been made to lay down any standard of quality of service that needs compliance. Further, in attempting to protect the interest of the consumer of the telecom sector at the cost of the interest of a service provider who complies with the leeway of an average of 2% of call drops per month given to it by another Regulation, framed u/s. 11(1)(b) (v) of the Act, the balance that is sought to be achieved by the Act for the orderly growth of the telecom sector has been violated. Hence, impugned regulation does not carry out the purpose of the Act and is ultra vires the Act. Further, as per technical paper dt.13-11-2015 issued by TRAI, average of 36.9% could be call drops owing to fault of consumer. Under such scenario, the very basis of 2015 Regulation is destroyed as the Regulation is based on the fact that the service provider is 100% at fault.

Under the 2015 Regulation, service provider is made to pay for call drops that might not be attributable to his fault, and the consumer receives compensation for a call drop that could be attributable to the fault of consumer himself, and that makes 2015 Regulation a regulation framed without intelligent care and deliberation. Further, 2009 Regulation and 2015 Regulation, both were made u/s. 11(1)(b)(v) of the Act and both deal with same subject matter i.e., call drops and both are made in the interest of the consumer. If an average of 2% per month is allowable to every service provider for call drops, and all service providers, short of Aircel, and that too in a very small way, have complied with the standard, then penalizing a service provider who complies with another Regulation framed with reference to same source of power would be manifestly arbitrary and would render Regulation violative of Arts. 14 and 19(1)(g) of the Constitution. Further, 2009 Regulation and 2015 Regulation has to be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of allowance of 2% average call drops per month, that was granted under 2009 Regulations, could not have been ignored by 2015 Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, 2015 Regulation is arbitrary and unreasonable. Further, mandatory penalty is payable by service provider for call drops that might take place which are not due to its fault, and could be due to the fault of the recipient of the penalty, and so, the same is vocative of Arts. 14 and 19(1)(g) of the Constitution. Hence, appeals are allowed and impugned judgment of Delhi High Court is set aside and 2015 Regulation is declared ultra vires of TRAI Act and vocative of appellant's fundamental rights as enshrined u/arts 14 and 19(1)(g) of the Constitution. Appeals disposed of.

## **UNFAIR TRADE PRACTICES**

Due to increase in competition and rising pressure to provide high quality services, certain product/service providers engage in unscrupulous practices such as deceiving the consumer in order to earn profits.

### **CONSUMER ISSUES**

By their definition, unfair trade practices are designed and engage in for the purposes of earning profit. There is no consideration for the well-being of the consumer. Accordingly, the problems faced by consumers due to unfair trade practices arise out of the fact that the goods and services received by the consumer do not match the description.

This can mean that due to false/misleading information, a consumer can receive goods and services which are unsafe or of sub-standard quality, have no amenities such as product warranties or guarantees etc.

### **CONSUMER PROTECTION ACT, 1986 and COMPETITION ACT, 2002**

Initially, the Monopolies and Restrictive Trade Practices Act, 1969 deal with unfair trade practices.<sup>390</sup> It dealt with five issues – false representation of goods and services, advertisement of false bargain price, use of contests and games of chance and skill, sale of goods which do not meet legal requirements and hoarding of goods.

Nowadays, the Consumer Protection Act, 1986 and the Competition Act, 2002 address the problem of unfair trade practices in two different ways – the former seeks to protect consumers from such unfair trade practices while the latter seeks to prevent such a situation from arising in which the product/service provider gains such a dominant position in the market that they can

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<sup>390</sup> Monopolies and Restrictive Trade Practices Act, 1969, s 36a.

engage in unfair trade practices and there will be no competition stopping the dominant player from preventing such unfair trade practices.

Accordingly, the relevant provisions which deal with unfair trade practices are:

1. Sec. 2(1)(r) of the Consumer Protection Act, 1986 defines unfair trade practice to be “*a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice*”.<sup>391</sup>
2. Sec. 3(1) of the Competition Act, 2002 prohibits anti-competitive agreements as “*No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India*”.<sup>392</sup>
3. Sec. 4 of the Competition Act, 2002 prohibits abuse of dominant position and defines dominant position as “*a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to— (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour*”.<sup>393</sup>

## CASES

### Abuse of dominant position

#### **Belaire Owner’s Association v. DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana**<sup>394</sup>

**Facts:** The information in the instant case was filed under Section 19(1)(a) of the Competition Act, 2002 (“Act”) by Belaire Owners’ Association

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391 Consumer Protection Act 1986, s 2(1)(r).

392 Competition Act 2002, s 3(1).

393 Competition Act 2002, s 4.

394 2011 SCC OnLine CCI 89.

(“Informant”) against the three respondents which are DLF, Haryana Urban Development Authority (“HUDA”) and Department of Town and Country Planning, Haryana (“DTCP”). It has been alleged by the Informant that DLF by imposing highly arbitrary, unfair and unreasonable conditions on the apartment allottees of the housing complex ‘The Belaire’, which has serious adverse effects and ramifications on the rights of the allottees, DLF has abused its dominant position. One of the main contentions was that that in place of 19 floors with 368 apartments, which was the basis of the Informant booking its respective apartments, now 29 floors have been constructed by DLF, unilaterally. Consequently, not only the areas and facilities originally earmarked for the apartment allottees were substantially compressed, but the project has also been abnormally delayed without providing any reasons to the Informants whatsoever. Whole argument was based on following four points/Issues:

**1<sup>st</sup> Issue:** Do the provisions of Competition Act, 2002 apply to the facts and circumstances of the instant case? DLF contended that Agreement would not fall under the jurisdiction of the Commission as the Agreement entered into between DLF and the allottees was before setting up of the Commission and before section 4 of the Act was enacted. The Commission however held that the Act applies to all the existing agreements and covers those also which though entered into prior to the coming into force of Section 4 but sought to be acted upon now thereby denying the contention of DLF. DLF further contended that as sale of an apartment can neither be termed as sale of “goods” nor sale of “service” Section 4(2) (a) (ii) of the Act is not relevant and applicable in the present case as the same can be invoked only when there is purchase or sale of either goods or service. The Commission however rejected this contention by relying on several Supreme Court judgements wherein it has time and again held that housing activities undertaken by development authorities are a “service” and are covered within the definition of “service” given in Section 2(1)(o) of the Consumer Protection Act, 1986. It has been further held by the Supreme Court in various cases that a purchaser of flats or houses or plots is covered under the definition of “consumer” under the said act. Thereby the Commission concluded that the Act had applied to the facts and circumstances of the instant case.

**2<sup>nd</sup> Issue:** What is the relevant market, in the context of Section 4 read with Section 2 (1)(r), Section 19(5), Section 19(6) and Section 19(7) of the Competition Act, 2002? The Commission observed that a relevant market is delineated on the basis of a distinct product or service market and a distinct geographic market. These terms have been defined in Section 2(1)(r) of the Act read with Section 2 (1)(s) and Section 2 (1) (t). As per the Commission, the promotional brochures of the property by DLF provided for innumerable additional facilities, like, schools, shops and commercial spaces within the complex, club, dispensary, health centre, sports and recreational facilities, and such features, along with the cost-range mentioned earlier, may be broadly considered to define the characteristics of “high-end residential accommodation”. The Commission noted that in the present case, Gurgaon is seen to be the relevant geographic market as a decision to purchase a highend apartment in Gurgaon is not easily substitutable by a decision to purchase a similar apartment in any other geographical location. As per the Commission, Gurgaon is known to posses certain unique geographical characteristics such as its proximity to Delhi, proximity to airports and a distinct brand image as a destination for upwardly mobile families. Thus the Commission was of the view that the relevant market in the instant case is the market for services of developer / builder in respect of high-end residential accommodation in Gurgaon.

**3<sup>rd</sup> Issue:** Is DLF dominant in the above relevant market, in the context of Section 4 read with Section 19 (4) of the Competition Act, 2002?

**4<sup>th</sup> Issue:** In case DLF is found to be dominant, is there any abuse of its dominant position in the relevant market by the above part? Commission relied on the given facts to determine the abuse of the dominant situation of the DLF.

**I-** Unilateral changes in agreement and supersession of terms by DLF without any right to the allottees.

**II-** DLF's right to change the layout plan without consent of allottees.

**III-** Discretion of DLF to change inter se areas for different uses like residential, commercial etc. without even informing allottees.

**IV-** Preferential location charges paid upfront, but when the allottee does not get the location, he only gets the refund/adjustment of amount at the time of last installment, that too without any interest.

**V-** DLF enjoys unilateral right to increase/decrease super area at its sole discretion without consulting allottees who nevertheless are bound to pay additional amount or accept reduction in area.

**VI-** Proportion of land on which apartment is situated on which allottees would have ownership rights shall be decided by DLF at its sole discretion (evidently with no commitment to follow the established principles in this regard).

**VII-** DLF continues to enjoy full rights on the community buildings sites/recreational and sporting activities including maintenance, with the allottees having no rights in this regard.

**VIII-** Arbitrary forfeiture of amounts paid by the allottees in many situations.

**IX-** Allottees have no exit option except when DLF fails to deliver possession within agreed time, but even in that event he gets his money refunded without interest only after sale of said apartment by DLF to someone else.

**X-** DLF's exit clause gives them full discretion, including abandoning the project, without any penalty.

**XI-** Third party rights created without allottees consent, to the detriment of allottees' interests.

**XII-** Punitive penalty for default by allottees, insignificant penalty for DLF's default. The moot point in this case and indeed the competition concern is that a dominant builder/developer is in a position to impose such blatantly unfair conditions in its agreement with its customers and bind them in such one-sided contractual obligation. In a competitive scenario, where the enterprise indulges in such anti-consumer conduct, there is sufficient competition in the market to provide easy alternatives for the consumer. This Commission held that the nature of clauses and conduct as indicated in

earlier paragraph are blatantly unfair, even exploitative. Competition Commission of India imposed a penalty of Rs. 630 crores against DLF Limited for its alleged monopolistic and unfair trade practices.

Extra price charged for safety pipes

**M/S Jagdev Gas service v. Bansi Lal Taneja<sup>395</sup>**

**Facts:** This is a revised petition filed by Gas service dealer against the order of State Commission. State Commission had modified the order passed by District Forum and had enhanced the compensation granted to Complainant by District Forum. The Opposite Party 1 is an authorized gas agency dealer of Bharat Petroleum Corporation (BPCL). The Complainant was a consumer of OP. He alleged that OP used to compel its consumers to purchase safety pipe worth Rs. 190 whose market price is Rs. 60-70/- and Rs. 40/- towards inspection of the connection. The Complainant had paid Rs. 230/- to OP but no person came to his house to check the gas connection. The Complainant complained about this to DFSC (District Food and Supplies Controller) and after their intervention the OP refunded Rs. 230/- to Complainant. However OP continued to cause inconvenience to Complainant and consumer filed complaint against OP in District Forum seeking compensation of Rs. 50,000/- The OP filed their written statement stating that they have acted as per the rules of Bharat Petroleum Corporation. The District Forum directed OP to pay Rs. 2,000/- as litigation charges to Complainant. Being aggrieved both parties challenged through separate appeals in State Commission. The appeal filed by OP was dismissed by State Commission and the appeal filed by Complainant was allowed and the litigation expenses were ordered to be enhanced from Rs. 2,000/- to 10,000/-. Being aggrieved against the order of State Commission, the OP filed a revision petition before NCDRC.

**Issue:** Whether the Gas dealer was justified on compelling the consumers to purchase safety pipe and by not providing regular gas supply?

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<sup>395</sup> 2017 SCC OnLine NCDRC 1615.

**Decision:** NCDRC held that there is no justification to carry out any modification in the order passed by the state commission in the exercise of the revisional jurisdiction. The present revision petition was dismissed and it was further stated that the OP must ensure that as refills are supplied to Complainant as per the norms at regular intervals. Also the deputy commissioner and DFSC, Amritsar are directed to ensure that there is regular supply of gas refills to consumers without fail and in the event of any lapse on the part of Petitioner (OP), suitable action should be taken. By civil administration with the rules and regulations on the subject.

**Star India (P) Ltd., v. Society of Catalysts & Anr.,<sup>396</sup>**

**Facts:** KBC had a segment meant for the home audience titled as Har Seat Hot Seat in which the home audiences could answer a general knowledge question asked during the show by calling through their MTNL/BSNL landlines or SMS through their Airtel connection at the applicable tariff. The winner was randomly selected by the computer from amongst the participants with the right answer announced as per the terms and condition was awarded the prize money of Rs. 2,00,000/-. The consumer complaint filed before the NCDRC alleging inter alia, that in conducting the Har Seat Hot Seat contest a ‘general Impression’ was given by Star that the participation to the contest was free I.e. the prize money for the contest was being given by Star, whereas in fact the prize money was allegedly being paid out of the collections by Star from the SMS and Calls being made by the participants. It was contended that this practice amounted to an unfair trade practice as per the consumer protection act. Star, on the other hand, had contended that no evidence/documentary proof was produced by the society or sample survey allegedly conducted by them was of no avail. Further, “Sponsorship” of Kaun Banega Crorepati or its Har Seat Hot Seat component is not an “unfair trade practice” within the meaning of Section 2(1)(r)(3)(a) of the Consumer Protection Act, 1986. The Consumer Protection Act does not declare genuine sponsorships as an “unfair trade practice”. It was also contended that Star is the organizer of KBC and Har Seat Hot Seat participation for which is free of charge. Star

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396 2020 SCC OnLine SC 70.

has not recovered any charge from the participants of KBC or Har Seat Hot Seat. Merely because prizes are being distributed by Star from sponsorships received from its sponsors, such as Airtel, it does not constitute an unfair trade practice under Section 2(1) (r) (3) (a) or Section 2(1) (r) (3) (b) of the Consumer Protection Act.

In 2008, the NCDRC in its Order held that Star and Airtel did not disclose the source of the prize money and created an apparent impression that the prize money emanated from them whereas in fact the prize money was paid from the collections obtained by Star and Airtel from SMS received from the participants. This practice amounted to an unfair trade practice and accordingly, Star and Airtel have burdened with punitive damages of Rs. 1 crore and legal costs of Rs. 50,000/-. Thereafter, Star India and Airtel had filed their respective appeals before the Supreme Court. The Supreme Court had stayed the operation of the Order of NCDRC on 21.11.2008.

**Issue:** Whether the contest Kaun Banega Crorepati (“KBC”) and the contest Har Seat Hot Seat was an unfair trade practice under the Consumer Protection Act, 1986?

**Decision:** The Supreme Court allowed the appeals filed by Star India and Bharti Airtel and set aside the Order of the NCDRC and held that “there is no other cogent material on record upon which the National Commission could have placed reliance to render the finding of ‘unfair trade practice’ under Section 2(1)(r)(3) (a) of the 1986 Act”, “we find that the Complainant has clearly failed to discharge the burden to prove that the prize money was paid out of SMS revenue, and its averments on this aspect appear to be based on pure conjecture and surmise. We are of the view that there is no basis to conclude that the prize money for the HSHS contest was paid directly out of the SMS revenue earned by Airtel, or that Airtel and Star India had colluded to increase the SMS rates so as to finance the prize money and share the SMS revenue, and the finding of the commission of an “unfair trade practice” rendered by the National Commission on this basis is liable to be set aside”,

Misleading advertisements

**Godfrey Phillips India Ltd. v. Ajay Kumar<sup>397</sup>**

**Facts:** The complaint was regarding unfair trade practice against cigarette advertisement; the advertisement in question carrying photo of an action hero, slogan and statutory warning. There was no plea in complaint that use of photo of hero and slogan suggested that smokers of cigarette can act as super hero; no detraction of statutory warning was alleged.

**Issue:** Whether the publication of advertisement will be discontinued?

**Decision:** The Supreme Court held that the direction issued to discontinue publication of advertisement was uncalled for. Further, the Complainant, who was a smoker of cigarettes for a long period of time, alleged that the advertisement caused loss to him. However, there was no evidence of negligence by the cigarette company and so compensation awarded to Complainant was unsustainable.

**General Motors (India) Private Limited v. Asok Ramnik Lal Tolat and another's<sup>398</sup>**

**Facts:** The Respondent/ Complainant purchased the motor vehicle Chevrolet Forester AWD Model on 1/05/2004 for Rs. 14 Lakhs and also for its accessories worth Rs. 1.91 Lakhs fitted. The purchase was made on the basis of an advertisement given by the Appellant wherein the motor vehicles was shown as an SUV suitable for on road off-road or no road driving. The Respondent found that the vehicle was not SUV but mere passenger car, not fit for off-road no road and dirt-road driving as represented and had defects. Terming the action of the appellant as amounting to unfair trade practice the Respondent filed a consumer complaint seeking refund of the price paid with interest and also compensation of Rs. 50,000/- and the costs. The District Forum directed refund with interest @ 9% p.a. from the date of complaint to the date of payments, apart from compensation of

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397 AIR 2008 SC 1828.

398 AIR 2015 SC 562.

Rs. 5,000/- for mental agony and Rs. 2000/- as costs of litigation. The State Commission modified the order of the District Forum and the Respondent was held entitled to Rs. 50,000/- as compensation which included costs of litigation. The Respondent was required to pay Rs. 5,000/- towards costs for undeserving claim. The Appellant was directed not to describe the vehicle in question as SUV in any form of advertisement, website, literature etc and to make the correction that it was passenger car as mentioned in the owner's manual. The Appellant had complied with the direction by issuing a disclaimer. The National Commission affirmed the findings of the State Commission that the appellant had committed unfair trade practice. The National Commission considering that the vehicle was used by the Respondent for a period of about one year and it had run approximately 14,000 km directed the Appellant to refund a sum of Rs. 12.5 Lakhs to the Respondent subject to the return of the vehicle to the Appellant without the accessories for which the Respondent had paid the money. A further sum of Rs. 50,000/- was awarded in favour of the Respondent to meet his cost of litigation before the consumer fora. The National Commission further held that though the other consumers had not approached the National Commission and a period of four years had passed. The Appellant should pay punitive damages of Rs. 25 Lakhs and out of the said amount; a sum of Rs. 5 Lakhs was directed to be paid to the Respondent while the rest was directed to be deposited in the Consumer Welfare Fund of the Central Government. .

**Issues:** 1. Whether there was unfair trade practice on the General Motors.  
2. Whether the order passed by the National Commission is valid or not?

**Decision:** The Court held that there is any averment in the complaint about the suffering of punitive damages of the other consumers nor was the Appellant aware that any such claim is to be met by it. Punitive damages are awarded against a conscious wrong doing unrelated to the actual loss suffered such a claim has to be specifically pleaded. The Respondent /Complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission in exercise of revisional jurisdiction was only concerned

about the directions or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to be passed. The National Commission has gone much beyond the jurisdiction in awarding relief which was neither sought in the complaint nor before the State Commission. The view of that to this extent the order of the National Commission. The view that to extent the order of the National Commission cannot be sustained. The said order of the National Commission and the Appellant having no notice of such a claim the said order is contrary to the principles of fair procedure and natural justice. It also makes clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law.

**Awdhesh Singh Bhadaria v. Union of India and Others,**<sup>399</sup>

**Facts:** The facts of the case are that many advertisements have been published by the companies in the newspapers and it has been claimed in the advertisement that their products provided best treatment for particular ailment. It has further been pleaded that some of the advertisements are related to improvement in sex power, but it has no clinical and research based results. In some of the advertisements, phone numbers have been given in the name of Friendship Club, however, these advertisements of giving phone numbers for sex. Even the advertisements of liquor have been published, which are illegal. In television also certain advertisements have been shown, which have no proof of clinic trial. It also contended that Astha Channel regularly Baba Ramdev used to declare that his medicines have 100% cure at Particular ailment including cancer, however there is no proof or clinical trial. According to the norms Clause (xiii) of the Norm No. 36 of the Journalist Conduct, 2010 specifically provides that tele-friendship advertisements carried by newspapers tend to pollute adolescent minds and promote immoral cultural ethos. The press should refuse to accept such advertisements. It has further been mentioned that the advertisement of contraceptive and supply of brand item attaching to the advertisement is not very ethical. Smt. Vibha Bhargava, Secretary, Press Council of India has

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<sup>399</sup> 2012 SCC OnLine MP 6718.

submitted her recommendation to the Ministry. As per the aforesaid recommendation, a common guideline be drawn up for monitoring advertisement in electronic media and a committee be set up to monitor the advertisement on regular basis with constitution of certain ministries. In compliance of the order of Hon'ble High Court of Madhya Pradesh. A Committee was constituted with certain objectives to Monitor misleading advertisement and unfair trade practices arising thereto and suggest steps accordingly identify and recommend appropriate legislative measures, Suggest on an on-going basis institutional measures for intervention in this regard, any other matter related to the problem.

**Decision:** The Court held that the Petitioner is free to make complaint before the Respondents and hope that such complaint is dealt with expeditiously effectively. Union of India is directed to take effective steps in regard to recommendations submitted by Smt. Vibha Bhargava, Secretary, and Press Council of India. No order as to costs.

**Ashok Ramnik Lal Tolat v. Gallops Motors Pvt. Ltd.<sup>400</sup>**

**Facts:** The Complainant alleged that he had been misled into purchasing the Chevrolet Forester AWD model because of advertisements proclaiming that it was an SUV, when it was in fact a passenger car.

**Decision:** The National Commission agreed with the contentions of the Complainant and held that he had been misled into buying the car and that amounted to an unfair trade practice. The Commission directed the return of Rs. 12.5 lakh out of the purchase money of Rs. 14 lakh, and also imposed punitive damages of Rs. 25 lakhs.

Refusal to allow water bottles inside movie halls

**Rupasi Multiplex v. Mautusi Chaudhuri<sup>401</sup>**

**Facts:** On 04.11.2014 the Respondents/Complainants purchased tickets for watching a movie at a cinema hall owned by the Petitioner, paying a sum of

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<sup>400</sup> Revision Petition No. 3349/2006 and 2858/2008 (NCDRC).

<sup>401</sup> 2015 SCC OnLine NCDRC 2331.

Rs. 330/- for the purpose. They were barred from taking a water bottle inside Rupasi Multiplex, and were compelled to buy highly priced mineral water bottles inside. The said multiplex had not made arrangements for free drinking water inside the hall, and was instead providing mineral water which was priced much more than its prevailing market price. Alleging deficiency in service, Respondents approached District Consumer Forum but their complaint was dismissed. In appeal State Commission ruled in favour of the Respondents. The landmark order of Commission came upon a revision petition filed by the Multiplex challenging the order of Tripura State Consumer Commission vide which the Multiplex was directed to pay Rs. 10,000/- to the Respondents as compensation for the deficiency in the service, along with the cost of litigation quantified at Rs. 1000/-. The multiplex owner was further directed to deposit a sum of Rs. 5,000/- as cost of appeal in the Legal-Aid-Account of the State Commission. After perusal of relevant documents and hearing both the parties.

**Issue:** Whether the multiplex had adopted an unfair trade practice under Section 2 (1)(f) of the Consumer Protection Act, 1986 by restricting the cinema goers not to carry drinking water inside the cinema hall, where free potable drinking water is not provided and they are made to purchase it at a price which is substantially higher than the prevailing market price?

**Decision:** NCDRC observed that water being a basic necessity for human beings, it is obligatory for the cinema hall to make it available to the movie-goers in case they decide not to allow the drinking water to be carried inside the cinema hall. NCDRC noted “Not everyone may be in a position to afford drinking water at such huge price, which normally is many times more than the price at which such water is available in the market outside the cinema halls.” It was held that free portable and pure drinking water must be provided inside the cinema halls, NCDRC directed a Multiplex owner to pay a compensation of Rs. 11,000/- to the respondents for refusing to allow them to carry a water bottle inside the hall.

Supply of low-quality floor tiles

**Lourdes Society Snehanjali Girls Hostel and Ors. v. H and R Johnson (India) Ltd. and Ors<sup>402</sup>**

**Facts:** On 02.02.2000, the Complainant Lourdes Society Snehanjali Girls Hostel purchased vitrified glazed floor tiles from the local agent of the H and R Johnson (India) Ltd. for a sum of Rs. 4,69,579/- . The said tiles, after its fixation in the premises of the Complainant, gradually developed black and white spots. The Complainant wrote several letters to the sales executive of the company, informing about the inferior and defective quality of the tiles. Thereafter, the local agent visited the spot but failed to solve the issue. An architect J.M. Vimawala was appointed by the Complainant to assess the damage caused due to defective tiles. The architect assessed the loss to the tune of Rs. 4,27,712.37/- which included price of the tiles, labour charges, octroi and transportation charges. Thereafter, the Complainant served a legal notice dated 12.08.2002 to the company making a demand of the said amount but no response was shown by the company. The said inaction on the part of the company made the Complainant to file a Consumer Complaint against the company before the District Consumer Disputes Redressal Forum at Surat for claim of the said amount. The District Forum allowed the complaint and held that the tiles supplied by the company had manufacturing defect. The District Forum by holding the company, local agent and sales executive jointly and severally liable, directed them to pay to the Complainant a sum of Rs. 2,00,000/- along with interest @ 9% p.a. from the date of complaint till its recovery within a period of 30 days from the date of order of the District Forum. Aggrieved by the decision, the opposite party appealed to the Gujarat State Consumer Dispute Redressal Commission, Ahmedabad. The State Commission dismissed the Appeal of the Opposite Party and confirmed the order passed by the District Forum. Thereafter, the Respondents filed a revision petition before the National Consumer Disputes Redressal Commission questioning the validity and correctness of the order passed by the District Forum and the State Commission. On 12.03.2012,

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402 AIR 2016 SC 3572.

the Complainant also made an application in revision petition to the National Commission for invoking the powers under Sections 14(d) and 14(hb) of the Consumer Protection Act, 1986 and for awarding sufficient amount of compensation in addition to amount already awarded by the District Forum. On appeal, the National Commission reversed the findings of the District Forum and the State Commission holding that the Complainant is a commercial entity and hence not a consumer within the meaning of Section 2(1)d of the Consumer Protection Act, 1986.

**Issue:** Whether a society registered under the Societies Registration Act a charitable institution or a commercial entity?

**Decision:** The Hon'ble Supreme Court observed that the National Commission has exceeded its jurisdiction in exercising its revisional power under Section 21(b) of the Consumer Protection Act, 1986 by setting aside the concurrent finding of fact recorded by the State Commission in First Appeal wherein the finding of fact recorded by the District Forum was affirmed. The facts of the instant case clearly reveal that the National Commission has erred in observing that the Appellant Society is a commercial establishment by completely ignoring the Memorandum of Association and byelaws of the Appellant-Society. Both the District Forum as well as the State Commission has rightly held that the Appellant Society is a charitable institution and not a commercial entity. The impugned order of the National Commission was hereby set aside and the order of the District Forum which was affirmed by the State Commission was restored.

Unfair to Charge For Paper Carry Bags, says Consumer Forum

**Dinesh Parshad Raturi v. Bata India Limited<sup>403</sup>**

**Facts:** The Raturi had bought a pair of shoes from a Bata store in Sector 22 D on February 5. He added that the actual price of a pair of shoes that he purchased was Rs. 399/-, but he paid Rs. 402/-. When he saw the bill, he found that he was charged Rs. 3 for the paper bag. Cashier at the Bata store handed over the pair of shoes and put in a paper bag bearing the

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<sup>403</sup> MANU/SF/0005/2019.

advertisement name of the shop ‘BATA’. However, Raturi had no intention to purchase the carry bag. Raturi stated that it was the duty of the store to provide the carry bag, but he was forced to pay price for the paper bag, which was being used as advertisement by Bata. He added that “Bata Surprisingly Stylish”, “Barcelona Milan Singapore New Delhi Rome” was printed on the paper bag. Raturi alleged that at the cost of the consumer, he was being used as the advertisement agent of the Bata India Limited. However, Bata India in reply just submitted that for the purpose of environmental safety, the Complainant was given carry bag at the cost of Rs. 3/-.

**Issue:** Whether charging for paper carry bags is an unfair trade practice?

**Decision:** The forum held that “there is unfair trade practice on the part of Bata India in compelling the Complainant to purchase the carry bag worth Rs. 3/- and if Bata India is an environmental activist, it should have given the same to the Complainant free of cost” and “it was for gain of the company” By employing unfair trade practice, opposite party [Bata] is minting lot of money from all customer and further consumer forum directed Bata India to provide free carry bags to all its customers forthwith who purchase articles from its shop and also directed Bata India to refund Rs. 3/- wrongly charged for the paper carry bag from Chandigarh resident Dinesh Parshad Raturi, pay him Rs. 3,000/- as compensation and Rs. 1,000/- as litigation expenses. It also directed Bata India to deposit Rs. 5,000/- in the “Consumer Legal Aid Account”.

#### Unfair trade practices in supply of LPG

**Auva Gas Agency through Paul Roluahpuia v. Consumer Union, Vairengte South Branch, Mizoram<sup>404</sup>**

**Facts:** A written complaint from the Consumer Union, Vairengte South Branch Respondent herein, was submitted to the President, District Forum Kolasib District on 22<sup>nd</sup> August 2012 against M/s Auva Gas Agency, Vairengte-Petitioner. In support of their complaint, the Respondent/

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<sup>404</sup> 2014 SCC OnLine NCDRC 316.

Complainant furnished complaints which they had received in original from 42 aggrieved consumers. The following points were mentioned in the complaint. (i) Excessive rate for new connection of LPG; (ii) Non-issue of receipt by agency; (iii) Inferior goods supplied; (iv) Non gas lighter is supplied etc. The District Forum vide its order dated 07.12.2012 allowed the complaint and gave the following order: (i) The Respondent M/s Auva Gas Agency, Vairengte should return a sum of Rs. 770/- to each existing customer on production of consumer card, for excessive price collected from them, within one month from the date of issue of judgment and order; (ii) The Respondent should pay a sum of Rs. 1960/ to the Complainants Consumer Union, Vairengte South Branch to cover the travelling expense of 14 persons at the rate of Rs. 140/- to and from Kolasib, within a month from the date of issue of Judgment and Order; (iii) The Respondent should, issue receipts to all their customers at the time of giving a new connection and for any other transaction with the customers; (iv) The Respondent shall repair defective materials supplied by them free of cost or exchange with new ones. They should also ensure that the materials supplied are of good quality. (quality assured) etc. Aggrieved by the order of the District Forum, the Petitioner/ Appellant filed an appeal before the State Commission. Along with the appeal a miscellaneous application for condonation of delay was filed where it was dismissed.

**Issue:** Whether State Commission was justified in dismissing the appeal?

**Decision:** NCDRC held that there is no justification to carry out any modification in the order passed by the state commission in the exercise of the revisional jurisdiction. The present revision petition was dismissed and it was further stated that the OP must ensure that gas refills are supplied to Complainant as per the norms at regular intervals. Also the deputy commissioner and DFSC, Amritsar are directed to ensure that there is regular supply of gas refills to consumers without fail and in the event of any lapse on the part of Petitioner (OP), suitable action should be taken by civil administration with the rules and regulations on the subject.

## **ADR**

ADR stands for ‘Alternate Dispute Resolution’. It refers to the use of non-adversarial and non-litigatory techniques such as arbitration, mediation, conciliation, neutral evaluation and expert determination for the purpose of dispute resolution.<sup>405</sup>

While ADR techniques have been utilised in India from a very long time, formal recognition was given in the form of the Indian Arbitration and Conciliation Act, 1996 and the introduction of Sec. 89 to the Code of Civil Procedure, 1908 which provides for courts to refer matters to arbitration, mediation, conciliation or judicial settlement through Lok Adalats.<sup>406</sup>

### **LEGISLATIONS/STATUTES PROMOTING ADR**

#### **1. CIVIL PROCEDURE CODE**

**Sec. 89** states that where it appears to the court that there exist elements of a settlement which may be acceptable to the parties the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties the court may reformulate the terms of a possible settlement and refer the same for-

- a) Arbitration**
- b) Conciliation**
- c) Judicial settlement through lok adalat**
- d) Mediation**

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405 ‘Alternative Dispute Resolution in India’ (*Law Times Journal*, 28 August 2017) <<https://lawtimesjournal.in/alternative-dispute-resolution-india/>> accessed 14 July 2019.

406 The Code of Civil Procedure (Amendment) Act, 1999.

In Sec. 89(1)(d) it states that for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

## **2. INDUSTRIAL DISPUTE ACT, 1947**

**Sec. 4(1)** states that the appropriate government appoints a number of persons as it thinks fit for the **conciliation officer** who is charged with a duty of mediating and promoting the settlement of industrial disputes by notification in the official gazette.

## **3. COMPANIES ACT, 2013**

**Sec. 442(1)** states that the central government shall maintain a panel of experts to be called as the **mediation and conciliation** panel consisting of such number of experts having such qualifications which may be prescribed for mediation between the parties during the pendency of any proceedings before the central government or tribunal or the appellate tribunal under this act.

## **4. FINANCE ACT, 2016**

Sec. 203(3)(b) states that where the declaration in respect of specified tax and the declarant has initiated any proceedings for **arbitration, conciliation or mediation** or has given any notice thereof under any law for time being in force

## **5. THE FAMILY COURTS ACT, 1984**

### **Sec. 9 Duty of Family Court to make efforts for settlement.-**

- (1) In every suit or proceeding, endeavor shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure

as it may deem fit. -(1) In every suit or proceeding, endeavor shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.”

- (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.
- (3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings.

## **6. ARBITRATION AND CONCILIATION ACT, 1996**

**Sec. 30 – SETTLEMENT:** - it states that

- 1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the parties; **the arbitral tribunal may use mediation, conciliation or other procedures** at any time during the arbitral proceedings to encourage settlement.
- 2) If during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and if requested by the parties and not objected by the arbitral tribunal record the settlement in the form of an arbitral award on agreed terms.
- 3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state it is an arbitral award.
- 4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

## 6. THE NOTARIES ACT, 1952

**Sec. 8(1) (HB)** states that act as an arbitrator, mediator or conciliator, if so required.

## 7. THE COMMERCIAL COURTS ACT, 2015

The commercial courts, commercial division and commercial appellate division of high court (amendment) ordinance of 2018, dated May 03, 2018, has inserted section 12A to the Commercial Courts Act 2015, contemplating **pre-institution mediation and settlement**, before the filing of any commercial disputes.

**Sec. 12A** states that “a suit which does not contemplate any urgent relief under this act, shall not be instituted unless the plaintiff exhausts the remedy of **pre-institution mediation and settlement in accordance with such manner and procedure** as may be prescribed by rules made by the central government”.

## RULES AND REGULATIONS PROMOTING ADR

### 1. LAND POOLING REGULATIONS, 2018

Provision: Rule 12 of II states that for settlement of disputes arising between members of landowners between Des and between consortiums with service providing agencies, the redressal of grievances shall be as under:

b. if the dispute between the parties are not settled **through conciliation process they may resort to mediation.**

### 2. SECURITIES AND EXCHANGE BOARD OF INDIA (OMBUDSMAN) REGULATION, 2013 under Securities and Exchange Board of India Act, 1992

Provision: Rule 16(1) states that the ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint sent to the registered or corporate office of the listed company or

office of the intermediary named in the complaint and **Endeavour to promote a settlement of the complaint by agreement or mediation** between the Complainant and the listed company or intermediary named in the complaint.

**3. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA(MODEL BYE LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS, 2016 under Insolvency and Bankruptcy Code, 2016**

Provision: Rule 21(2) schedule of model bye laws of an insolvency professional agency under regulation 3 read with regulation 2(1)(c) of IX 21(2) states that the grievances redressal committee after examining the grievance may, **initiate a mediation between the parties for redressal of grievances.**

**4. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) REGULATIONS, 2017 under Insolvency and Bankruptcy Code, 2016**

Provision: Rule 12(2) sates that the grievance redressal policy shall provide for details of mediation mechanism and **maximum time for the disposal of the grievances by way of dismissal, resolution or the initiation of mediation.**

**5. NATIONAL LEGAL SERVICE AUTHORITY (LEGAL AID CLINICS) AMENDMENT REGULATIONS, 2014 under Legal Service Authorities Act, 1987**

Provision: Rule 3(1) states that the following clause shall be substituted, namely-district ADR centre means the district alternative dispute resolution centre established under the 13<sup>th</sup> finance commission and includes any other similar facilities like nyaya seva sadans at the **district level where facilities for counseling, mediation, lok adalat and legal service are provided under a single roof.**

**6. JOINT ELECTRICITY REGULATORY COMMISSION  
(APPOINTMENT AND FUNCTIONING OF OMBUDSMAN)  
REGULATIONS 2009 under Electricity Act, 2003**

Provision: Rule 4(1)(c) states that the ombudsman shall in the first instance seek to facilitate settlement of the grievances made in the representation through conciliation and mediation in matters which are subject matter of the representation filed.

**7 COMPANIES (MEDIATION AND CONCILIATION)  
RULES, 2016 under Companies Act, 2013**

Provision: In exercise of the powers conferred under section sec 442 read with sec. 469 of the companies' act, 2013.

**8. GENDER SENSITIZATION AND SEXUAL HARASSMENT  
OF WOMEN (PREVENTION, PROHIBITION, AND  
REDRESSAL) REGULATIONS, 2013 under Sexual  
Harassment of Women at Workplace (Prevention, Prohibition  
and Redressal) Act, 2013**

Provision : Rule 7(3) crisis management and mediation it states that GSICC will assist the mediation of crisis out of incidents of sexual harassment at the supreme court precincts.

**9. DIRECT TAX DISPUTE RESOLUTION SCHEME RULES  
2016 under Finance Act, 2016**

Provision: Rule 4(3)(b) initiated any proceedings for arbitration, conciliation or mediation or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw such notice or the claim, if any in such proceedings prior to making the declaration and furnish proof thereof along with the declaration referred to in sub section (1).

**10. INSURANCE OMBUDSMAN RULES, 2017 under Insurance Regulatory and Development Authority Act, 1999;**

Provision: Rule 16: RECOMMENDATIONS MADE BY THE INSURANCE OMBUDSMAN

- (1) Where a complaint is settled through mediation, the ombudsman shall make a recommendation which it thinks fair in the circumstances of the case, within one month of the date of receipt of mutual written consent for such mediation and the copies of the recommendation shall be sent to the complainant and the insurer concerned.
- (2) If the recommendation of the ombudsman is acceptable to the complainant, he shall send a communication in writing within fifteen days of receipt of the recommendation, stating clearly that he accepts the settlement as full and final.
- (3) The ombudsman shall send to the insurer a copy of its recommendation, along with the complaint and the insurer shall, thereupon, comply with the terms of the recommendation, and inform the ombudsman of its compliance.

**11. Commercial Court (Pre-Institution Mediation and Settlement) Rule, 2018 under Commercial Courts Act, 2015**

**Rule 3: Initiation of mediation process**

- (1) A party to a commercial dispute may make an application to the Authority as per Form-1 specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;
- (2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation

process on such date not beyond a period of ten days from the date of issue of the said notice.

- (3) Where no response is received from the Opposite Party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).
- (4) Where the notice issued under sub-rule (3) remains unacknowledged or where the Opposite Party refuses to participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule-I and endorse the same to the Applicant and the Opposite Party.
- (5) Where the Opposite Party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the Opposite Party.
- (6) Where the Opposite Party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule-I and endorse the same to the Applicant and the Opposite Party.
- (7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.
- (8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the Applicant and the Opposite Party.

#### **Rule 4: Venue for conducting mediation**

The venue for conducting of the mediation shall be the premises of the Authority.

**Rule 5: Role of Mediator**

The Mediator shall, on receipt of the assignment under sub-rule (7) of rule 3, facilitate the voluntary resolution of the commercial dispute between the parties and assist them in reaching a settlement.

**Rule 6: Representation of parties**

A party to a commercial dispute shall appear before the Authority or Mediator, as the case may be, either personally or through his duly authorized representative or Counsel.

**Rule 7: Procedure of mediation**

- (1) The mediation shall be conducted as per the following procedure:
  - (i) At the commencement of mediation, the Mediator shall explain to the parties the mediation process;
  - (ii) The date and time of each mediation sitting shall be fixed by the Mediator in consultation with the parties to the commercial dispute.
  - (iii) The Mediator may, during the course of mediation, hold meetings with the parties jointly or separately, as he thinks fit;
  - (iv) The Applicant or Opposite Party may share their settlement proposals with the Mediator in separate sittings with specific instruction as to what part thereof can be shared with the other party;
  - (v) The parties to the mediation can exchange settlement proposals with each other during mediation sitting either orally or in writing;
  - (vi) During the process of mediation, the Mediator shall maintain confidentiality of discussions made in the separate sittings with each party and only those facts which a party permits can be shared with the other party;
  - (vii) Once both the parties reach to a mutually agreed settlement, the same shall be reduced in writing by the Mediator and shall be

signed by the parties to the commercial dispute and the Mediator as per Form-4 specified in the Schedule-I;

- (viii) The Mediator shall provide the settlement agreement, in original, to all the parties to a commercial dispute and shall also forward a signed copy of the same to the Authority; and
  - (ix) Where no settlement is arrived at between the parties within the time specified in the sub-section (3) of section 12A of the Act or where the Mediator is of the opinion that the settlement is not possible, the Mediator shall submit a report to the Authority, with reasons in writing, as per Form-5 specified in Schedule-I.
- (2) The Authority or the Mediator, as the case may be, shall not retain the hard or soft copies of the documents exchanged between the parties or submitted to the Mediator or notes prepared by the Mediator beyond a period of six months other than the application for mediation under sub-rule (1) of rule 3, notice issued under sub-rule (2) or (3) of rule 3, settlement agreement under clause (vii) of sub-rule (1) of rule 7 and the Failure report under clause (ix) of sub-rule (1) of rule 7.

**Rule 8: Parties to act in good faith**

All the parties to a commercial dispute shall participate in the mediation process in good faith with an intention to settle the dispute.

**Rule 9: Confidentiality of mediation**

The Mediator, parties or their authorized representatives or Counsel shall maintain confidentiality about the mediation and the Mediator shall not allow stenographic or audio or video recording of the mediation sittings.

**Rule 10: Maintenance and publication of mediation data**

- 1 The District Legal Services Authority shall forward the detailed data of the mediation dealt by it under the Act to the State Legal Services Authority.

- (2) The State Legal Services Authority shall, maintain the data of all mediations carried out by it or under its jurisdiction and publish the same, on quarterly basis, on its website as per Form-6 specified in the Schedule-I.

**Rule 11: Mediation Fee**

Before the commencement of the mediation, the parties to the commercial dispute shall pay to the Authority a one-time mediation fee, to be shared equally, as per the quantum of claim as specified in Schedule-II.

**Rule 12: Ethics to be followed by Mediator**

The Mediator shall-

- (i) uphold the integrity and fairness of the mediation process;
- (ii) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process;
- (iii) disclose any financial interest or other interest in the subject-matter of the commercial dispute;
- (iv) avoid any impropriety, while communicating with the parties to the commercial dispute;
- (v) be faithful to the relationship of trust and confidentiality reposed in him;
- (vi) conduct mediation related to the resolution of a commercial dispute, in accordance with the applicable laws for the time being in force;
- (vii) recognise that the mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary agreement;
- (viii) refrain from promises or guarantees of results;
- (ix) not meet the parties, their representatives, or their counsels or communicate with them, privately except during the mediation sittings in the premises of the Authority;

- (x) not interact with the media or make public the details of commercial dispute case, being mediated by him or any other allied activity carried out by him as a Mediator, which may prejudice the interests of the parties to the commercial dispute.

## **CONSUMER ISSUES**

As opposed to classic litigation, ADR has multiple benefits to consumers<sup>407</sup>:

1. A single procedure is followed as opposed to multiple rounds of litigation.
2. The autonomy of the parties is maintained and they have a greater role in the process of dispute resolution.
3. ADR proceedings are private and the results can be kept confidential.

## **PRIVATE AND PUBLIC ADR INSTITUTIONS**

As a result, ADR usually allows for fast and inexpensive dispute redressal to consumers as opposed to classic litigation.<sup>408</sup> This fact has been recognised by the government and numerous service providers – the former has introduced the possibility of ADR for resolution of disputes in legislations, such as Chapter V of the Consumer Protection Act, 2019<sup>409</sup> while the latter provides for the aggrieved consumer to have out-of-court settlements.

Numerous private and government institutions offer ADR services:

1. ASSOCHAM International Council of Alternate Dispute Resolution (AICADR) is based on the UNICTRAL model and it allows parties to have their disputes resolved by the AICADR using all forms of ADR if they sign a model clause in the contract.<sup>410</sup>

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407 WIPO, 'ADR Advantages' <<https://www.wipo.int/amc/en/center/advantages.html>> accessed 14 July 2019.

408 Mediation and Conciliation Project Committee, 'Mediation Training Manual of India' <<https://www.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>> accessed 14 July 2019.

409 Consumer Protection Bill 2019, ch V.

410 ASSOCHAM International Council of Alternate Dispute Resolution, 'AICADR Manual' <<http://assocham.org/upload/docs/AICDAR-Manual.pdf>> accessed 14 July 2019.

2. The International Centre for Alternative Dispute Resolution (ICADR) is an autonomous institution which offers ADR services for dispute resolution.<sup>411</sup>
3. CAMP (Centre for Advanced Mediation Practices) is a private firm which offers arbitration and mediation facilities.<sup>412</sup>
4. Bangalore International Mediation, Arbitration and Conciliation Centre (BIMACC) is an independent institution which offers ADR services as well as allows parties to have their case reviewed by a neutral evaluator.<sup>413</sup>

## CASES

### Allegations of fraud or criminal act and jurisdiction of tribunals

#### **SAP India Private Ltd. v. Cox and Kings Ltd.**<sup>414</sup>

**Facts:** SAP Se GmbH is one of the world's largest and leading provider of business software solutions entered into an agreement with the Cox and Kings Ltd., inter alia for services and for implementation of Applicant's SAP Hybris E-Commerce Solution Software. The respondent was contractually obligated to pay the Applicant on the basis of time spent by the Applicant's team on the project where the timelines and the cost for the services were provided only on an estimate basis. The Respondent started alleging that timelines in respect of the project were not being adhered by the Applicant and alleged that the Applicant and its top management misrepresented to the Respondent that the said software was 90% compatible to the requirements of the Respondent. On the allegations of the Respondent against the Applicants and its representative it gave rise to dispute between the parties. The representative of Applicant held several meeting and discussion with the Respondent and try to settle the dispute in amicable manner and it also provided a six weeks solution design of the operation areas but this was ignored by

411 ICADR Brochure <<http://icadr.nic.in/file.php?123?12:1475756936>> accessed 14 July 2019.

412 CAMP, 'Mediation Services' <<http://www.campmediation.in/mediation-services/>> accessed 14 July 2019.

413 Bangalore International Mediation, Arbitration and Conciliation Centre <<https://www.bimacc.org/index.php>> accessed 24 June 2019.

414 2018 SCC Online Bom 5635.

the Respondent and demanded for the refund of the money and consequential losses terminating the agreement on the ground of alleged delay. On the backdrop of the dispute having been arisen the Applicant invoked a reference of the disputes to arbitration as per the agreement in relation to the wrongful termination of the agreement and the recovery of the principle claim amount along with the additional interest and cost under the agreement. The Applicant informed the Respondent that the Applicant had appointed Mr. Justice V.C. Daga (Retd.) on its behalf to act as an arbitrator and called upon the Respondent to appoint an arbitrator on their behalf. It is the contention of the Respondent that the entire dispute arises from criminal conduct of the Applicant and its officers and that the agreement which contained arbitration clause, is invalid and inoperative and as there are allegations of fraud, the disputes are not arbitrable. The Respondent refused to comply with the requisition of the Applicant and accordingly failed to appoint an arbitrator on its behalf. Therefore the application was filed by the applicant before Bombay High Court seeking appointment of the Respondent arbitrator.

**Issue:** When a party in a contract has alleged fraud, whether the Court would be prevented in the facts of the case from referring the dispute to arbitration?

**Decision:** The Hon'ble High Court of Bombay relying on the case of *A. Ayyasamy v. A. Paramasivam and others* (MANU/SC/1179/2016), allowed the application to appoint the arbitrator. The Hon'ble Court observed that mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. Therefore the Hon'ble Court held that the allegations of the Respondent of a fraud and criminal act would not detract the jurisdiction of the arbitral tribunal to resolve disputes which arise from a contractual relationship for which the parties have entered into the arbitration agreement.

Arbitration clauses and jurisdiction of consumer forums

**Aftab Singh and Ors. v. Emaar MGF Land Limited and Ors.<sup>415</sup>**

**Facts:** The Complainants Aftab Singh and Ors. had booked residential villas/flats/plots in Projects of the Builder Emaar MGF Land Limited and Ors to

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415 2017 SCC OnLine NCDRC 1614.

be developed in Gurgaon/Mohali and had executed Buyers Agreements. The home-buyers have filed consumer complaint alleging buyer has failed to hand over the possession. There was an arbitration clause in the agreement which says disputes arising in relation to allotment letter between the parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. Emaar MGF Land Ltd. had filed a set of applications under Section 8 of the Arbitration Act praying that the issues raised by the Opposite Parties shall be referred to arbitration according to builder-buyer agreements executed between the developer and the buyers. Section 8 (i) of the Arbitration Act says unless the judicial authority finds that *prima facie* no valid arbitration agreement exists, the relevant judicial/quasi-judicial authority is obliged to refer the parties to arbitration if a valid arbitration agreement exists.

The matter was brought before NCDRC, it was held that an arbitration clause in a builder-buyer agreement cannot circumscribe the jurisdiction of the consumer forum irrespective of the amendments made to Section 8 of The Arbitration and Conciliation. Appeal was filed by builders before the Supreme Court challenging the order of NCDRC. Aggrieved by this Emaar MGF filed an appeal before the Supreme Court challenging the orders of NCDRC. The Supreme Court dismissed the appeal and observed that it does not find any ground to interfere with the order of NCDRC. The appellant filed the review petition to review the judgement.

**Issues:** Can an arbitration clause circumscribe the jurisdiction of the Consumer Forum?

**Decision:** The Hon'ble Supreme Court finding no ground to review the order dismissed the Review Petition. The Hon'ble Court said that the dispute within the trust, trustees and beneficiaries are not capable of being decided by the arbitrator despite the existence of arbitration agreement.

#### Confidentiality in mediation

#### **Smriti Madan Kansagra v. Perry Kansagra<sup>416</sup>**

**Facts:** The parties to the instant petition are disputants before the Family Court claiming guardianship of the son born to them. In order to resolve the

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<sup>416</sup> 2017 SCC OnLine Del 12156.

dispute amicably, the parties opted for Mediation which unfortunately failed. The Counsellor appointed by the Mediator submitted its report to this Court thereby causing the Court decision of 07.02.2017. The Petitioner raised a grievance against the decision of this Court dated 07.02.2017 holding that the reports furnished by the Counsellor and Mediator were not confidential and will not fall within the bar of confidentiality.

The counsel for the Petitioner referring to the Delhi High Court Mediation and Conciliation Rules, 2004, Conciliation Rules of United Nations Commission on International Trade Law (UNCITRAL) and Mediation Training Manual issued by the Supreme Court, argued that mediation is purely a confidential process and anything said or any view expressed by the parties; or documents obtained etc. in the course of the process, need not be a part of the mediation report especially when the mediation has failed.

**Issue:** Whether the either parties during the trial can use the Counsellor's or the Mediator's report in case report furnished in the course of mediation proceedings the process fails?

**Decision:** Allowing the petition it was observed by the Court, that 'confidentiality' is the essence of mediation proceedings. Mediator cannot file reports to the Court especially when the process has failed. Mediators cannot involve experts or counsellors in the process and if any need arises, the parties must approach the Court to explain requirement. In case a counsellor is appointed, a mediator shall not present when the parties are interacting with the counsellor and interactions of the counsellor and Court should be confidential as well. Based on the observations, the Court directed the Family Court to disregard the reports of the Mediator and Counsellor when it will determine the case upon its merits. It was also held that the said report will not be a subject of debate or argument.

Court can't directly appoint arbitrator if parties have not exhausted remedies under Arbitration Agreement

**Union of India (UOI) v. Parmar Construction Company<sup>417</sup>**

**Facts:** The work for construction of office accommodation for officer and rest house was allotted to the Parmar constructions. The time period and

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417 MANU/SC/0445/2019.

measurement of the constructions were duly accepted by the parties and when Appellants officials failed to clear final bill the Respondent put a line over “under protest” and signed no claim certificate. The total value of the work executed was of Rs. 58.60 lakhs against which Rs. 55.54 lakhs was paid and escalation cost was not added with interest @ 18% over delay payment. Demand notice was sent to the Appellants to appoint an arbitrator invoking Clause 64(3) of the GCC to resolve the disputes. When the Appellants failed to appoint the arbitrator in terms of Clause 64(3), application came to be filed Under Section 11(6) of the Act, 1996 before the Chief Justice for appointment of an independent arbitrator who after hearing the parties allowed the application of the Respondent and appointed a retired judge of the High Court as an independent arbitrator to arbitrate the proceedings.

**Issue:** Whether it was permissible for the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint third party or an independent Arbitrator when the parties have mutually agreed for the procedure vis-a-vis the authority to appoint the designated arbitrator?

**Decision:** The Supreme Court held that the Chief Justice or his Designate, in exercise of power under Section 11(6) of the Arbitration and Conciliation Act, 1996, cannot directly make an appointment of an independent arbitrator without, in the first instance, resorting to ensure that the remedies provided under the arbitration agreement are exhausted.

**Sawarmal Gadodia v. Tata Capital Financial Services Limited and Ors.<sup>418</sup>**

**Facts:** The Tata Capital Financial Services Ltd. (company) who are IBN the business of lending finance are whilst appointing the arbitrators not following the provisions of the Act, but without disclosing this fact in the disclosure mandatorily required to be made under the Act, are appointing the same Arbitrator in hundreds of matters; sometimes in more than 1000 (one thousand) matters, enquired from Mr. Bhogal the number of arbitration proceedings. Company has appointed Shri P.C. Phalgunan as an arbitrator in all the four the cases and nothing was mentioned about the fees payable to

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<sup>418</sup> MANU/MH/1163/2019.

the Arbitrator by the parties prior to the commencement of the arbitration proceedings. Subsequently company furnished in the court a list of their advocates, arbitrators appointed by these advocates, & the number of proceedings in which the same advocate is appointed as an arbitrator. The list clarifies that while many advocates were appointed only once to three matters as arbitrators, a few have been appointed in 200 to 600 matters. The Sawarmal Gadodia (Appellant), from Orissa had come to the High Court to challenge four awards passed by the sole arbitrator namely Adv. P C Phalgunan on February 2019. He was appointed by the company's advocates in 252 matters mentioning only eight was an "inadherence".

**Issue:** Whether the Arbitrators appointed by parties must disclose exact number of their pending arbitrations & the number of matters he or she was appointed in, in the last three years?

**Decision:** The Bombay High Court held set aside four arbitral decisions of an arbitrator appointed by Tata Capital Financial Services as the arbitrator has failed to disclose that he had been appointed as arbitrator by the company in 252 matters where the company is a claimant, & misleadingly said that only about eight matters are ongoing, besides other discrepancies as Section 12 of the Act mandates a proposed Arbitrator to disclose in writing any circumstance which is likely to give rise to justifiable doubts as to the independence or impartiality of an arbitrator and which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

**Hindustan Construction Company Limited and Ors. v. Union of India (UOI) and Ors.,<sup>419</sup>**

**Facts:** The present petition challenging the constitutional validity of Section 87 of the Arbitration and Conciliation Act, 1996 as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 states that amendments made to the 1996 Act by the Arbitration and Conciliation (Amendment) Act, 2015 would not apply to court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court

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419 MANU/SC/1638/2019.

proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015. It also states that the aforesaid amendments will apply only to arbitral proceedings commenced on or after the commencement of the 2015 Amendment Act and to court proceedings arising out of or in relation to such arbitral proceedings.

**Issue:** Whether insertion of Section 87 into Arbitration Act, 1996 by 2019 Amendment Act, can be struck down as being manifestly arbitrary under Article 14 of Constitution of India?

**Decision:** Supreme Court while disposing the petition observed the Srikrishna Committee Report where it did not refer to the provisions of the Insolvency Code. After the advent of the Insolvency Code, the consequence of applying Section 87 was that due to the automatic-stay doctrine laid down by judgments of this Court—which had only been reversed today by the present judgment—the award-holder may become insolvent by defaulting on its payment to its suppliers, when such payments would be forthcoming from arbitral awards in cases where there was no stay, or even in cases where conditional stays are granted. Also, an arbitral award-holder was deprived of the fruits of its award—which is usually obtained after several years of litigating—as a result of the automatic-stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic-stays of arbitral awards, exposing such award-holders to the rigors of the Insolvency Code. For all these reasons, the deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, was struck down as being manifestly arbitrary under Article 14 of the Constitution of India.

Court fee should be refunded although the dispute settled without recourse to S. 89 CPC

**Suresh Kumar Gupta v. State of Punjab<sup>420</sup>**

**Facts:** An appeal was filed by the Suresh Kumar Gupta against the order passed by the Additional Civil Judge (Senior Division), Faridabad where the suit for specific performance filed by him was dismissed by amicable

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420 2019 SCC OnLine P&H 660.

settlement. Rakesh Kumar Sharma, counsel for the Applicant/Appellant submitted that the Appellant does not wish to pursue the appeal which was filed for the specific performance as the dispute between the parties had been resolved amicably. The Applicant/Appellant further prayed for the refund of the court fee.

**Issue:** Whether the Court Fee can be refunded back to the parties when the dispute between the parties resolved amicably?

**Decision:** The High Court of Punjab held that the object behind Section 89 of the Civil Procedure Code, 1908 is to encourage the parties to arrive at the settlement. It is not important that the parties are referred to the four methods but if parties themselves at the earliest stage before the court come to the settlement, it will be considered that the object of Section 89 is achieved. The court further held that “No party should be discriminated in the matter of refund of Court Fees mainly on the ground that they have settled the dispute at the earliest stage before the court without recourse to any of the methods mentioned under Section 89 of the Civil Procedure Code, 1908.” Thus, the court directed the refund of the court fees appended with the appeal to the Appellant.

Deciding the place of jurisdiction

**Shakti Bhog v. Kola shipping list.**<sup>421</sup>

**Facts:** The Appellant company was into manufacturing and export of food products and grains. The Appellant was expected to export Soghrum to state of Nigeria through cargo. The Appellant and Respondent had decided for Appellant to export certain amount of goods. Later, Respondent stated that he wasn't satisfied with amount of goods exported. Later, due to its constraints the Appellant could not export for same and was ready to give compensation for the same. The dispute, had started between them for amount of goods exported. The Appellant asked the Respondent to unload the same goods as he was ready to pay compensation for the loss to which he did not respond. Later, the Respondent initiated the proceedings in Delhi High Court

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<sup>421</sup> AIR 2009 SC 12.

for the same under Section 9 of Carriage Act. But, it stated that Section 9 won't be applicable if place of arbitration is not India whereas, the place of arbitration was decided to be London. Therefore, the Respondent has taken the jurisdiction of case as preliminary objective.

**Issue:** How can a place of jurisdiction be decided?

**Decision:** The parties can decide its jurisdiction only during the existence of arbitration agreement.

Development of litigation policy

**Union of India v. Tilak Raj Singh.<sup>422</sup>**

**Facts:** The Plaintiff on October 20, 1987 had boarded a general class compartment for his journey from Meerut Cantonment to Ludhiana in the train run by Indian Railways Govt. of India (OP) and he was standing at the exit door. When the train reached Muzaffarnagar, some of the bogies did not reach up till the platform and to give way to others, he came down. When the train started moving, he tried to board it and due to a sudden and jerky movement of the train, he along with other passengers fell and he got entangled between the wheels of the train and was dragged for a long distance. He claimed in the plea that no first aid was given to him at the Muzaffarnagar railway station and he was taken to a hospital in a rickshaw. Due to blood loss and inadequate facilities, he developed an infection and was shifted to Safdarjung hospital. It said that his leg had to be operated upon thrice at Safdarjung hospital and later, his leg had to be amputated. In the year 1990 he filed a civil suit in a Meerut court, but the railways raised an issue of jurisdiction and after a period of 12 years i.e on 14<sup>th</sup> January, 2002, the plaint was returned by the Civil Court, Meerut saying lack of jurisdiction. The Plaintiff then filed an application claiming compensation before the Railway Claims Tribunal (RCT constituted under the Railways Act.) in the year 2005. In July 2008, the RCT held that the case is liable to be tried only by a Civil Court of competent jurisdiction and not by the RCT. The suit was then shuttled back to the District Judge, Meerut who declined to accept the case

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422 2018 SCC OnLine Del 9464.

saying that the RCT was not competent to transfer the case to it. Thereafter the suit was brought before Delhi High Court in the year 2008. In September, 2010, a learned Single Judge of this Court held that the suit is barred by limitation and the suit was rejected. This judgement was challenged in appeal before the Division Bench of the Delhi High Court, which held that the period during which the suit remained pending before the Civil Judge, Meerut and the RCT ought to be excluded in view of Section 14 of the Limitation Act. The suit, thereafter, proceeded to trial. Issues were framed, on 4<sup>th</sup> January 2016, due to the pecuniary jurisdiction; the suit was transferred to the District and Sessions Judge, Patiala House Court Complex. After hearing averments of both the parties the suit was decreed for the sum of Rs. 6,60,000/- along with the interest @ 12% per annum. The order of Trial court was challenged before the High Court on various grounds.

**Issue:** Whether the suit was barred by Limitation?

**Decision:** The Plaintiff was granted a total compensation of Rs. 9 lakhs along with simple interest @ 8% for the entire period from filing of the suit before the District Judge Meerut till date of decree. Hon'ble High Court further observed that an organisation such as the Railways which is located across the length and breadth of this country ought not to delay cases of compensation in this manner. The Railway sought to adopt a 'Litigation policy' to deal with cases when torturous claims for compensation are filed against them. In such cases, compulsory pre-litigation mediation can also be explored to bring about an early settlement. Such a step would reduce the costs for the Railways as also reduce the number of cases filed, and finally ensure timely and efficient payment of compensation.

Erroneous reference to Arbitration Act, 1940

**Purushottam s/o Tulsiram Badwai v. Anil & Ors.<sup>423</sup>**

**Facts:** The Appellant Purushottam and Anil & Ors. the Respondents had entered into a Partnership Agreement dated 09.11.2005. Clause 15 of said Partnership Agreement was as under: "That in case of any dispute between the partners as regards interpretation of this Deed or any other matter

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<sup>423</sup> Civil Appeal No.4664/2018 (SC).

connected with the partnership business, the same shall be referred to for arbitration in accordance with the provisions of Indian Arbitration Act, 1940, and the decision of the Arbitrator shall be final and binding on all the partners.”

The Appellant had also executed a registered Power of Attorney on in favour of the partners. In April 2014 the Respondents filed Special Civil Suit No.16 of 2014 in the Court of Civil Judge, Senior Division, Bhandara for declaration, damages, accounts and permanent injunction against the Appellant. Soon after receipt of the notice, the Appellant preferred an application under Section 8 of 1996 Act to refer the dispute to arbitration in view of aforesaid clause 15 in the Partnership Agreement. The matter was contested. The Trial Court rejected the said application and held that clause 15 was vague, that there was no reference as to who should be the arbitrator, that there was no mention about selection of the arbitrator and that the dispute did not form subject matter of agreement within the meaning of Section 8 of 1996 Act.

When the matter was brought before the High Court, it took the view that the relevant clause indicated agreement between the parties to refer the disputes to arbitration as per provisions of the Indian Arbitration Act, 1940, (1940 Act, for short) although the Partnership Agreement was entered into much after the enactment of 1996 Act. Thus High Court upheld the lower court order rejecting reference to arbitration.

Rejection of application under Section 8 of the Arbitration and Conciliation Act, 1996 which was affirmed by the High Court of Bombay at Nagpur is under challenge in this appeal before Hon’ble Supreme Court.

**Issue:** Can the matter be dealt with the terms of Section 8 of 1996 Act?

**Decision:** Hon’ble Supreme Court viewed High Court was not right in observing that there could be no arbitration at all in the present case and accepted the appeal preferred by the Appellant. The matter will have to be dealt with by the trial court in terms of Section 8 of 1996 Act. Considered in paragraph 35 was a possibility that in terms of Section 85 (2)(a) of 1996 Act even when the proceedings had commenced under 1940 Act, the parties could still agree on the applicability of the 1996 Act.

Interpretation of ‘suit’

**Patel Roadways Limited v. Birla Yamaha Limited.**<sup>424</sup>

**Facts:** The Respondent along with Appellant had booked generator sets. Later, fire took place in the godown of Respondent where the goods were kept. This incident occurred just after the goods were kept in the godown. Therefore, Respondent made a claim on value of goods refund for freight charges and compensation for loss. But no satisfactory solution was arrived from both the parties. Therefore, Respondent filed a complaint against the Appellant before National Commission. Now, the question was whether carriage act is included under the provisions of consumers.

**Issue:** Whether Section 9 of Carriage Act is included in Consumer Act?

**Decision:** The word suit not only means a regular suit but it also includes all the ordinary proceedings of civil matters whether they arise in suit or miscellaneous proceedings. Therefore, even though National commission is a summary proceeding it can be considered as suit.

**Economic Transport Organisation, Delhi v. Charan Spinning Mills private limited and others.**<sup>425</sup>

**Facts:** This case contains two Respondents and one appellant. The first Respondent is a manufacturer of cotton yarn. Later, the first Respondent signed a insurance policy which was considered to be 2<sup>nd</sup> Respondent in the case to cover the risks of cotton yarn. 1<sup>st</sup> Respondent carried the cotton yarn to the Appellant. During this time, the vehicle met with an accident and all the cotton yarn was destroyed. With this the first and second Respondent filed a complaint against the Appellant before the District Consumer Redressal Forum. Now, the same question arises whether carriage act is included under the provisions of consumer act?

**Issue:** Whether Section 9 of carriage’s act is included into consumer protection Act?

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424 (2000) 4 SCC 91.

425 (2010) 8 SCC 24.

**Decision:** The term suit is missing in both Sec. 9 of Carriers Act as well as in consumer protection act. Moreover, it does not state that suit has same concept as of mentioned in Civil Procedure Court. Same principle has been stated as of above case that is of *Patel Roadways Limited. v. Birla Yamaha Limited*. As national commission is said to have a summary proceeding it is still considered to be as a suit.

Issuing of directions by arbitrator

**Surinder Kumar Beri and Ors. v. Deepak Beri and Ors.** :<sup>426</sup>

**Facts:** Petitioner No. 1, S.K Beri is the founder of various business entities. Petitioner No. 2 is the wife of Petitioner No. 1. It is stated by Petitioner no. 1 that he has been involved in the business of manufacturing and trading of knives and other cutting tools since 1952. His two sons, namely, Sh. Deepak Beri, Respondent no. 1 and Sh. Atul Beri, Respondent no. 2 have also joined the Petitioner in his business. Initially the business was managed through a partnership firm by the name S.K. Beri & Brothers. Currently, Petitioner no. 1 has 50% share and the two sons are partners with 25% share each in the said firm. As some disputes arose between the two sons, the sons entered into an arbitration agreement. The two sons thereafter entered into a Memorandum of Understanding. Separation of the companies, firms and properties as stated therein was agreed upon. The object was that the two brothers would separate their businesses amicably without affecting the running of the family business. It is further stated that two further documents were executed for smooth transaction of the steps proposed in the MOU. The learned arbitrator pronounced his award. The arbitrator in his award noted that all the disputes have been settled in view of the agreements signed and there remains only implementation of the settlement between the two parties. In addition, the learned arbitrator gave various directions to the parties as stated therein. The Petitioners have challenged the present award. Mr. Atul Beri, Respondent no. 2 has also challenged the award in another petition. Both the petitions are heard together.

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426 2016 SCC OnLine Del 9371.

**Issue:** Whether an arbitrator can issue further directions in an attempt to execute the award?

**Decision:** The Hon'ble High Court observed that the arbitrator in an attempt to execute the award had given the directions. However, by doing so he had mixed the mediation process and adjudicatory process. Such further directions could only be given pursuant to adjudication.

Hon'ble High Court held that directions that have been passed are clearly illegal and contrary to the mandatory and statutory procedure. The learned Arbitrator cannot suo motu on his own de hors the procedure prescribed under the Arbitration Act. Hence, the award to the extent that it gives directions de hors the agreement between the parties. Awards are illegal and being severable, are set aside.

Mediation of cheque-bounce cases

**Dayawati v. Yogesh Kumar Gosain<sup>427</sup>**

**Facts:** The Complainant/Appellant Smt. Dayawati filed a complaint under Section 138 of the Negotiable Instrument Act, complaining that the Respondent Shri Yogesh Kumar Gosain had a liability of Rs. 55,99,600/- towards her as on 7<sup>th</sup> April, 2013 as recorded in a regular ledger account for supply of fire-fighting goods and equipment to the Respondent. In part discharge of this liability, the Respondent had issued two account payee cheques in favour of the Complainants of Rs. 11,00,000/- (dated 1<sup>st</sup> December, 2014) and Rs. 16,00,000/- (dated 28<sup>th</sup> November, 2014). These two cheques were dishonoured by the Respondent's bank on presentation on account of "insufficiency of funds".

The Complainant served a legal notice of demand on the Respondent which, when went unheeded, led to the filing of two complaint cases under Section 138 of the NI Act before the Patiala House Courts, New Delhi. In these proceedings, both parties had expressed the intention to amicably settle their disputes. Consequently, by a common order dated 1<sup>st</sup> April, 2015 recorded in

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<sup>427</sup> 2017 SCC OnLine Del 11032.

both the complaint cases, the matter was referred for mediation to the Delhi High Court Mediation and Conciliation Centre.

The parties settled their disputes under a common settlement agreement dated 14<sup>th</sup> May, 2015 under which the accused agreed to pay a total sum of Rs. 55,54,600/- to the Complainant as full and final settlement amount in installments with regard to which a mutually agreed payment schedule was drawn up. It was undertaken that the complainant would withdraw the complaint cases after receipt of the entire amount.

The accused drawer failed to comply with the terms of the settlement. Thus, the Metropolitan Magistrate held that the Mediation had failed. Thereafter, the Complainant filed an application for enforcement of settlement to which the accused argued that the settlement agreement was not binding contending it to be unfair and arbitrary.

In view of the question of law that has arose and the requirement of proper adjudication a reference was been made for consideration and guidance of the Hon'ble High Court of Delhi (under Section 395 of The Code of Criminal Procedure, 1973).

**Issue:** Whether offences covered under Section 320 of the Cr.P.C can be referred to mediation/ADR?

**Decision:** The Court held that even though an express statutory provision enabling the criminal court to refer the Complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature, the Code of Criminal Procedure (CrPC) does permit and recognize settlement without stipulating or restricting the process by which it may be reached.

It was held that there is no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of the Code of Civil Procedure) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C.

Mediation Settlements Should Be Given Effect To Immediately

**Vikas Garg v. The State of Rajasthan<sup>428</sup>**

**Facts:** The court had referred a matrimonial matter to mediation last year. The settlement was recorded on 10<sup>th</sup> May, 2018 and a week later on 16.5.2018 a direction was issued by the Court to list the matter after vacation. When the matter came up, the bench comprising of Justice Sanjay Kishan Kaul and Justice KM Joseph recorded the settlement and directed the parties to strictly abide by the terms of the settlement. The bench then observed that the settlement was recorded as far as on 10<sup>th</sup> May, 2018. On 16.5.2018 a direction was issued by this Court to list the matter after vacation. This matter has been listed after one year i.e. after the second summer vacation. It is trite to say that the mediation settlement should be given effect to immediately. We see no reason why due precaution should not have been taken in listing the matter at the earliest after the summer recess of 2018 or why it should have been deleted from the list.

**Decision:** The Supreme Court disposed the petition directing the Registrar concerned should look into the matter as to why such specific directions of the court about listing before the Court are not being followed strictly and submit the report on the administrative side within a period of four weeks and fix responsibility in this regard.

**Sterling Industries v. Jayprakash Associates Ltd.,<sup>429</sup>**

**Facts:** The partial award passed by the Arbitral Tribunal was assailed by filing an application before the District Judge. The writ petition was filed challenging the arbitral award was filed before the High Court. The High Court Set aside the arbitral award observing that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India.

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428 Petitions for Special Leave to Appeal No.1089/2018.

429 AIR 2019 SC 3558.

**Issue:** Whether the Award passed by the Arbitral Tribunal can be set aside by the High Court invoking its Writ Jurisdiction under Art.226 & 227 of Constitution?

**Decision:** The Supreme Court observed that such an application was not tenable in view of Section 16 (6) of the Arbitration Act, which provides that the party aggrieved by an arbitral award can only make an application for setting aside such an arbitral award in accordance with section 34 of the Act. Since such an application was not tenable, we fail to understand how in a writ petition filed against an order made by the District Judge in an untenable application, the High Court could have set aside the partial award. This is clearly contrary to law and set aside the order of High Court

**Kaushaliya v. Jodha Ram and Ors.<sup>430</sup>**

**Facts:** The litigation was between a father and his daughter with respect to some properties. When the matter reached the Apex Court, it referred them to mediation. A settlement agreement was reached between them and the Court disposed of the Special Leave Petition in terms of the Settlement Agreement. The contention raised by the disputant parties is that the disputed properties in question were not the subject matter of original suit proceedings and therefore the same could not have been the subject matter of Settlement Agreement entered into between the parties and hence opposite party did not comply with the decision of the apex court hence this present petition.

**Issue:** Whether the Settlement Agreement is with respect to the properties which was/were not the subject matter of the proceedings before the Court is executable?

**Decision:** The divisional bench of Supreme Court observed that in the Mediation proceedings, it is always open for the parties to explore the possibility of an overall amicable settlement including the disputes which are not the subject matter of the proceedings before the Court. That is the benefit of the Mediation. In the Mediation parties may try for amicable

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<sup>430</sup> MANU/SC/1618/2019.

settlement, which is reduced into writing and/or a Settlement Agreement and thereafter it becomes the part of the Court's Order and the Court disposes of the matter in terms of the Settlement Agreement. Thereafter the order in terms of the Settlement Agreement is executable irrespective of the fact whether the Settlement Agreement is with respect to the properties which was/were not the subject matter of the proceedings before the Court. Thereafter the order passed by the Court in terms of the Settlement is binding to the parties and is required to be acted upon and/or complied with and the same is executable.

Principle confidentiality in mediation does not apply to the matters of Child Custody.

**Perry Kansagra v. Smriti Madan Kansagra<sup>431</sup>**

**Facts:** The Appellant and Respondent got married and after marriage, shifted to Nairobi, Kenya and settled into her matrimonial home with the Appellant. A son, named Aditya Vikram Kansagra was born, after delivery, the Respondent returned back to Nairobi along with Aditya. Thereafter, the Respondent and Aditya travelled from Kenya to India on few occasions. Aditya holds Kenyan as well as British passport. The Appellant, Respondent and Aditya came from Nairobi to New Delhi. While in India, the Respondent filed a civil suit registered before the High Court of Delhi praying inter alia for an injunction to restrain the Appellant from removing Aditya from the custody of the Respondent. Upon notice being issued, the Appellant contested the suit in which visitation orders were passed by the High Court from time to time. The Appellant thereafter filed Guardianship Petition before the Family Court, Saket, New Delhi praying inter alia that he be declared as the legal Guardian of Aditya and be given his permanent custody. An application of Appellant was allowed by Family Court directing the Court Counsellor to bring Aditya to the Court for an in-chamber meeting. The Respondent being aggrieved filed an appeal before High Court. The High Court referred the parties to mediation and also directed that Aditya be produced before the

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<sup>431</sup> MANU/SC/0445/2019.

Court. During the ensuing mediation sessions, the Mediator and the Counsellor interacted with Aditya. Though, mediation was attempted on many occasions, the parties were unable to resolve their disputes and differences and an interim report was submitted by the Mediator. The sealed cover containing the report of the Counsellor was opened and the report was taken on record. Copies of the report of the Counsellor were given to the parties. The Appellant relied upon the report of the Counsellor and prayed for permission to speak to Aditya on telephone. While opposing the prayer, the Respondent objected to such reliance on the ground of confidentiality.

**Issue:** Whether the principle confidentiality in mediation apply to the matters of Child Custody?

**Decision:** The Supreme Court said that in order to reach correct conclusion, the court may interview the child or may depend upon the analysis of an expert who may spend some more time with the child and gauge the upbringing, personality, desires or mental frame of the child and render assistance to the court. It is precisely for this reason that the element of confidentiality which is otherwise the basic foundation of mediation/conciliation, to a certain extent, is departed from in Sub-Rule (viii) of Rule 8 of the Family Court Rules. “The intention is clear that the normal principle of confidentiality will not apply in matters concerning custody or guardianship issues and the Court, in the best interest of the child, must be equipped with all the material touching upon relevant issues in order to render complete justice”.

#### Purpose of mediation

#### **Karun Bhalla v. Rajeev Bansal<sup>432</sup>**

**Facts:** Karun Bhalla is a decree holder and Rajeev Bansal is a judgement debtor in this case. Parties have entered into a settlement agreement before the Delhi High Court Mediation and Conciliation Centre on 2.9.2015 at the initial stage of the dispute. Parties have signed the settlement agreement.

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432 MANU/DE/5261/2017.

Accordingly, the suit was disposed as per the terms of the settlement agreement and it was further agreed that in case, any fresh disputes arise between the parties on the basis of the settlement agreement; either of the parties are at liberty to file appropriate independent proceedings, in accordance with law. The Execution petition of settlement agreement was brought before High Court of Delhi.

**Issue:** Whether settlement agreement served the purpose of finishing the litigation once and for all as there was a clause saying either of the parties is at liberty to file appropriate independent proceedings, in accordance with law?

**Decision:** Court held that a Settlement Agreement drawn up by the Mediation Cell of the Court should not be allowed to furnish a cause of action for further litigation. The attempt of the mediator should be to bind the parties by providing such default clauses as may discourage further litigation.

Further it was observed by the court that “a better settlement” in the circumstances would have been to provide for a decree for recovery of money in terms of Settlement Agreement to be passed, so that in the event of default it could be executed.

Referral of suit under Sec. 89 of CPC

**Afcons Infrastructure Ltd and Anr v. Cherian Varkey Construction Co. (P) Ltd and others.<sup>433</sup>**

**Facts:** The case emphasises on Mediation. The case contains one Appellant and two Respondents. The second Respondent entrusted the work of construction of certain bridges and roads to the Appellant. Later, the Appellant sub-contracted the part of said work to the first Respondent. Then, the first Respondent filed a complaint against the Appellant due to the employees of Appellant. But, there was no provision of settling a dispute through arbitration process. The case states that if parties are not agreeing on arbitration and conciliation they can opt for mediation as an option for settling dispute. It

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<sup>433</sup> (2010) 8 SCC 24.

also states that with mediation the choice for settling the disputes becomes wider. Furthermore, it also explains the meaning of mediation that is a mean to dispute resolution process by negotiating settlement with assistance of neutral third party. Moreover, it states that all other suits and cases of civil nature are normally suitable for ADR process.

**Issue:** Parties had not decided arbitration as process to settle the disputes?

**Decision:** A civil court exercising under the section of 89 cannot refer a suit unless all the parties or the suit agree for the same. Similarly, this appeal is allowed and the order of trial court referring to arbitration and order of High court affirming the said reference are said aside. Therefore, the trial court will now consider and decide upon a non-adjudicatory ADR process.

Refusal of arbitration

**Ameet Lalchand Shah and Others v. Rishabh Enterprises and Another**<sup>434</sup>

**Facts:** Rishabh Enterprises, the Respondent in the instant case had entered into four agreements for the commissioning of the Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh, first one for Equipment and Material Supply Contract in February 2012 with M/s Juwi India Renewable Energies Pvt. Ltd. Second agreement was for Engineering, Installation and Commissioning Contract in February 2012 again with Juwi India. Third one is Sale and Purchase Agreement in March 2012 with Astonfield Renewable Pvt. Ltd. And fourth one was an Equipment Lease Agreement (dated 14.03.2012) between Rishabh and Dante Energy. Third agreement dated 05.03.2012, was without an arbitration clause.

Dispute arose between the parties when Rishab alleged that Dante Energy has defaulted in payment of rent and Astonfield committed fraud by inducing Rishab to purchase the photovoltaic products by investing huge amount. It also alleged that the appellants have committed misrepresentation and

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<sup>434</sup> MANU/SCOR/38669/2019.

criminal breach of trust so far as the equipment procured and leased to Dante Energy. Rishab filed a suit against the Appellants before the Delhi High Court levelling various allegations including fraud and misrepresentation. On receipt of notice, the Appellants preferred an application under Section 8 of the Act to refer the dispute to arbitration. Upon dismissal of the said application by the Delhi High Court, the Appellants preferred an appeal before the Supreme Court.

The Appellants sought for reference to arbitration of all the four agreements by contending that the Sale and Purchase Agreement is the main agreement and that other three agreements are inter-connected as they are executed between the same parties and the obligations and the performance of the terms of the agreements are inter-connected.

Respondents Rishab and Singhvi resisted the same contending that the suit is for declaration that the agreements are vitiated due to fraud and misrepresentation and while so, the matter cannot be referred to arbitration. They also contended that the agreements and disputes were not referable to arbitration.

**Issue:** Whether the Instant case can be referred to arbitration, where allegations of fraud are involved?

**Decision:** After hearing all parties, the Hon'ble Supreme Court set aside the judgment of the High Court and held that though there are different agreements involving several parties, it is a single commercial project. The dispute between the parties to various agreements could be resolved only by referring all the four agreements and the parties thereon to arbitration.

The court also rejected Rishab's argument that agreements cannot be referred to arbitration because of allegations of fraud and misrepresentation. Further Supreme Court observed only where serious questions of fraud are involved, the arbitration can be refused. In this case, as contended by the Appellants there were no serious allegations of fraud; In any event, the Arbitrator appointed can very well examine the allegations regarding fraud.

Supreme Court allows enforcement of a foreign arbitral award against Hindustan Copper in favour of Centrotrade Minerals

**Centrotrade Minerals and Metals Inc. v. Hindustan Copper Ltd.<sup>435</sup>**

**Facts:** The Appellant is a U.S. Corporation who had entered into a contract for sale of 15,500 DMT of copper concentrate to be delivered at the Kandla Port in the State of Gujarat, the said goods to be used at the Khetri Plant of the Respondent Hindustan Copper Ltd. After all consignments were delivered, payments had been made in accordance with the contract. However, a dispute arose between the parties as regards the quantity of dry weight of copper concentrate delivered. Clause 14 of the agreement contained a two-tier arbitration agreement by which the first tier was to be settled by arbitration in India. If either party disagrees with the result, that party will have the right to appeal to a second arbitration to be held by the ICC in London. The Appellant M/s. Centrotrade Minerals and Metals Inc. (hereinafter referred to as “Centrotrade”/“the Appellant”) invoked the arbitration clause. By an award dated 15.06.1999 the arbitrator appointed by the Indian Council of Arbitration made a Nil Award. Thereupon, Centrotrade invoked the second part of the arbitration agreement, as a result of which Jeremy Cook QC, appointed by the ICC, delivered an award in London.

**Issue:** Whether the arbitral awards passed in London is enforceable against Hindustan Copper Ltd.?

**Decision:** The Supreme Court finally declared that an Award dated September 29, 2001 passed in London was enforceable against Hindustan Copper analysing earlier two round of litigation i.e., First Round culminating in *Centrotrade Minerals and Metals Inc. v. Hindustan Copper Limited* decided on May 9, 2006 (reported in (2006) 11 SCC 245). This judgment ended in a split decision between Justice S.B. Sinha and Justice Tarun Chatterjee as regards the permissibility of a multi-tier arbitration procedure. Second Round culminating in *Centrotrade Minerals and Metals Inc. v. Hindustan Copper Limited* decided on December 15, 2016 (reported in (2017) 2 SCC 228). Here, a

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435 MANU/SC/0464/2020.

three-judge bench headed by Justice Madan Lokur and comprising Justices DY Chandrachud and Agrawal upheld the legality of a two tier arbitration mechanism. Three-judge bench comprising Justices Rohinton Nariman, S Ravindra Bhat, and V Ramasubramanian On facts, it was found that Hindustan Copper had been given adequate opportunity to present its case by its counsel Fox and Mandal. Thereafter, the Court considered authorities from all over the world and held that the award would be enforceable in India.

Use of online mediation

**Mrs. Shreeja Satish Kutty v. Mr. Satish Krishnan Kutty<sup>436</sup>**

**Facts:** The parties in the instant petition are disputants before the Family Court. The Petitioner wife is resident of Kottarakkara, Kerala. The case is at the stage of mediation before mediation centre Kalyan, Maharashtra. The Petitioner contends that it creates hardship for her to travel from Kottarakkara, Kerala to Kalyan, Maharashtra, hence she has applied for transfer of case from Kalyan, Maharashtra to Kottarakkara, Kerala before the Hon'ble Supreme Court.

**Issue:** Can it be allowed for Online Mediation in Family Court?

**Decision:** Supreme Court held that, it is open to the Petitioner-wife to claim expenses for the attending dates, as and when she is required to travel from Kottarakkara, Kerala to Kalyan, Maharashtra. She can also avail the remedy of participating in the proceedings by video conferencing, if available, as and when directed by the concerned Court on permissible dates. The Court can try for settlement by way of mediation.

Application of transfer was disposed; no case for transfer was made out. The transfer petition was accordingly dismissed.

**Priti Singh v. Utkarsh Singh.<sup>437</sup>**

**Facts:** The parties in the instant petition are disputants before the Family

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<sup>436</sup> MANU/SCOR/51629/2017.

<sup>437</sup> MANU/SCOR/51538/2017.

Court. The Appellant/Petitioner wife Priti Singh has applied for the transfer of the case as she is having hardship to travel to the court in which the suit has been filed. She wants to transfer the case to the jurisdiction of court which is nearest to her.

**Issue:** Can it be allowed for Online Mediation in Family Court?

**Decision:** Court ordered that the Petitioner may claim travel expenses from the Respondent for herself, as well as for one attendant who may be accompanying her, on the particular dates. She may also avail video conferencing facility as and when permitted by the court. In case, the parties make a prayer for mediation, the concerned court shall make endeavour in that direction also. No ground to transfer the case was made out. Accordingly, the transfer petition was dismissed.

Use of remote conferencing

**Grid corporation of Orissa v. AES corporation.**<sup>438</sup>

**Facts:** The Petitioners and Respondents entered into shareholders agreement. The clauses for same on Appointment of arbitrator was that one arbitrator would neither be from India nor from U.S. One partner agreed to the same orally while others agreed to it in written. With everyone's acceptance, one partner sent a mail by introducing an arbitrator from New Zealand. Furthermore, a partner denied appointing him as an arbitrator stating that according to the provisions of arbitration and conciliation he disagrees to appoint an arbitrator from New Zealand as the jurisdiction is in court of Orrisa and place of arbitration is Bhubaneshwar. Moreover, due to this he asked to appoint for same the retired high court judge of Orrisa or of Supreme court of India.

**Issue:** Whether an arbitrator can be appointed from different place of arbitration?

**Decision:** The Supreme court stated that, "when an effective consultation can be achieved by resort to electronic media and remote conferencing, it is

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438 AIR 2002 SC 3435.

not necessary that the two persons are required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties.”

Videoconference as evidence

**State of Maharashtra v. Praful Desai<sup>439</sup>**

**Facts:** This case focuses on Online Dispute resolution. Complainant's wife was suffering from terminal cancer. She was examined by a doctor in U.S. The doctor suggested about surgery of uterus and recommended a doctor for same. Taking this into consideration Complainant and his wife went through surgery. In this process, ascetic fluids were oozing from the stomach. Due to which the recommended doctor asked for advice from the same doctor in U.S. For which he recommended to close his wife's stomach. He did accordingly. Later due to which whatever his wife drank or would eat the same would come out of the wound. Further, the complaint filed a complaint against the Doctor. For recording the evidence of Doctor from U.S, he was required to be in India. To record the evidence for the same the doctor from U.S denied coming to India. Due, to his denial, suggestion of video-conference for recording the evidence was made.

**Issue:** Whether, evidence can be recorded through video-conference?

**Decision:** The supreme court affirmed the techno-legal aspects that the modern justice system requires and agreed on recording the witness on video-conference.

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<sup>439</sup> (2003) 4 SSC 601.

## MISCELLANEOUS

### Additional Compensation to farmers on Crop Failure

**Vinod Kumar S/O Ram Singh v. Indian Farmers Fertilizers Co-Operative Society Ltd. (IFFCO) & Anr.<sup>440</sup>**

**Facts:** The Complainants/Respondents purchased 180 Kgs of Gwar seeds from the Petitioner. The seeds were sown by them in their respective agricultural land but the crop was not upto mark. The said seeds had been manufactured by Respondent no. 2 and according to the Complainants; they were assured by the Petitioner that the seeds would give proper yield of 8 to 10 quintals per acre. They had followed proper instructions and procedure and had taken due care and precautions required for the said crop and had prepared the fields, ploughing three times in order to get better yield as per the requisite. On complaints made by the Complainants to the Agriculture Department, an inspection was carried out by their team and they found the plants to be of different variety. About 60-70% of the plants had high growth without any fruits. Being aggrieved from the financial loss suffered by them on account of insufficient yield, the Complainants approached the concerned District Forum where it dismissed the complaint. The District Forum having dismissed the complaints, the Complainants approached the concerned State Commission by way of appeal. The State Commission allowed the appeal and directed the Petitioner to pay Rs. 30,000/- as compensation along with Rs. 11,000/- for mental harassment and the cost of litigation quantified at Rs. 5,500/-. Being aggrieved from the aforesaid order, the Petitioner approached NCDRC by way of revision petitions as they were not satisfied with the quantum of the compensation awarded to them by the State Commission with an application of Condonation of Delay of 257 days.

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440 MANU/CF/0355/2019.

**Issue:** Whether the Complainants are entitled for compensation to them for loss of crop in addition to compensation that was awarded to them for mental harassment and cost of litigation?

**Decision:** The NCDRC Considering the fact that the Petitioners are poor farmers and also considering that the State Commission did not award even the minimum price of the crop to them while assessing the compensation for the loss of the crop, the delay in filing the revision petitions is condoned and further considering that even if the compensation for the loss of the crop is calculated @ Rs. 17,000/- per quintal, the compensation for the loss of crop itself would come to Rs. 3,40,000/- and accordingly modified the order to that extent in addition to compensation for mental harassment and cost of litigation awarded by the State Commission. The balance payment to the Complainants, it directed, shall be made within eight weeks from the date of the order, failing which it shall carry interest @ 9% p.a. from the date of institution of the complaint.

Applicability of Limitation Act

**The Union Of India v. Md. Jasiruddin Talukdar on 3 June.<sup>441</sup>**

**Decision:** The Gauhati High Court has held that “Special acts like Workmen’s Compensation Act, 1951, Consumer Protection Act, 1956 and Motor Vehicles Act, 1988, are surveyed, it is found that while making provisions for filing appeal/award against the order passed by the authority, the legislature provided the power to condone the delay in filing an appeal so prescribed for filing such appeal. Hence, Section 5 of the Limitation Act is inapplicable”.

Consumer and Commercial Purpose

**Sunil Kohli and Anr. v. M/s Purearth Infrastructure Ltd.,<sup>442</sup>**

**Facts:** The Complainants are non-resident Indians presently residing in Denmark. They intend to shift to India. Thus with the intention to earn their livelihood they booked shop No.P-3-115 having super area 1095 sq. ft.

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<sup>441</sup> 2010 SCC OnLine Gau 67.

<sup>442</sup> MANU/SCOR/01702/2019.

@ 9900 per sq. ft. Total consideration payable for the shop was Rs. 1,08,40,500/- . As per the terms and conditions of the agreement the Opposite Party had assured to give possession of the shop to the Complainants within two years from the date of commencement of construction. The Complainants had paid the consideration amount as per the agreed instalments but the Opposite Party failed to deliver the possession even years after the expiry of the stipulated date. Claiming this to be unfair trade practice and deficiency in service on the part of Opposite Party the Complainants have raised the consumer disputes before National Commission. The National commission observed that as the Complainants had booked the commercial premises, it can be safely concluded that they had hired/availed of the services of the Opposite Party for commercial purpose, as such they are not the consumers as envisaged under Section 2 (1) (d) of the Act.

**Issue:** Whether purchaser of the goods for commercial purpose is a consumer if he uses it himself for earning his livelihood?

**Decision:** The Supreme Court observed that it cannot be ruled that the case of the Complainants would not come within the definition of “consumer” as defined under the provisions of the Act. Referring to Section 2(1)(d)(i) of the Act and also the judgments in *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583; and, *Cheema Engineering Services v. Rajan Singh*, (1997) 1 SCC 131, the bench observed “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’”.

**Nandan Biomatrix Ltd. v. S. Ambika Devi and Others<sup>443</sup>**

**Facts:** The Complainant (the Respondent herein) is a small landholder who responded to the advertisements issued by the Appellant, a seed company, in 2003, regarding buyback of safed musli, a medicinal crop, at attractive prices. She entered into a tripartite agreement with the Appellant and its

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<sup>443</sup> 2020 SCC OnLine SC 309.

franchisee M/s. Herbz India. As per the agreement, the Respondent purchased 750 kgs of wet musli for sowing from the Appellant, at the rate of Rs. 400/- per kg, and cultivated the same in her land. The Appellant was to buy back the produce at a minimum price of Rs. 1,000/- per kg from the Respondent. The Respondent lodged a consumer complaint alleging negligence and breach of contract on the part of the Appellant on the ground that the Appellant failed to buy back her produce, leading to the destruction of the greater part of the crop. The District Forum dismissed the complaint. On appeal by the Respondent, the State Commission set aside the order passed by the District Forum, holding that the Respondent was a “consumer” under the 1986 Act, and remanded the matter to the District Forum for disposal on merits. It is this order which was impugned before the National Commission by way of a revision petition filed by the Appellant. The National Commission upheld the finding of the State Commission. The Revision Petition was dismissed with a cost of Rs. 2,500/- imposed on the Appellant, payable to the Respondent. The instant appeal has been filed against the above order of the National Commission before the Hon'ble Supreme Court.

**Issue:** Whether the Respondent was excluded from the purview of the definition of “consumer” under Section 2(1)(d) of the 1986 Act on account of the subject transaction amounting to resale or for being for a commercial purpose?

**Decision:** 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’. 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.

Supreme Court held that what needs to be emphasised is that the Appellant had selected a set of farmers in the area for growing seeds on its behalf. After entering into agreements with the selected farmers, the Appellant supplied foundation seeds to them for a price, with an assurance that within a few months they will be able to earn profit. The seeds were sown under the supervision of the expert deputed by the Appellant. The entire crop was to be purchased by the Appellant. The agreements entered into between the

Appellant and the growers clearly postulated supply of the foundation seeds by the Appellant with an assurance that the crop will be purchased by it. It is neither the pleaded case of the Appellant nor was any evidence produced before any of the Consumer Forums that the growers had the freedom to sell the seeds in the open market or to any person other than the Appellant. Therefore, it is not possible to take the view that the growers had purchased the seeds for resale or for any commercial purpose and they are excluded from the definition of the term “consumer”. As a matter of fact, the evidence brought on record shows that the growers had agreed to produce seeds on behalf of the Appellant for the purpose of earning their livelihood by using their skills and labour.” It is amply evident from the above that an agreement for buyback by the seed company of the crop grown by a farmer cannot be regarded as a resale transaction, and he cannot be brought out of the scope of being a “consumer” under the 1986 Act only on such ground. Thus, even in the instant case, the fact that there was a buyback agreement for the musli crop would not bring the Respondent outside the purview of the definition of “consumer” by rendering the buyback arrangement a resale transaction or being for a commercial purpose. Thus, we find no reason to interfere with the order passed by the National Commission affirming that the Respondent is a “consumer” within the meaning of the 1986 Act,

**Joint Labour Commissioner and Registering Officer and Another v. Kesar Lal<sup>444</sup>**

**Facts:** The Respondent obtained a Labour Beneficiary Identity Card on 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. Seeking to avail financial aid under the scheme, the Respondent submitted an application in anticipation of the marriage of his daughter. Nine months after the application was submitted, the Joint Commissioner of Labour, Jaipur issued an order of rejection.

It was argued by the Appellant that, where the State commits itself to welfare schemes and a negligible amount is charged in token of the services which

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<sup>444</sup> 2020 SCC OnLine SC 327.

are rendered, the beneficiary of a service is not a ‘consumer’ within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986.

**Issue:** 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(1)(d) of the Consumer Protection Act, 1986?

**Decision:** Supreme Court held that 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(1)(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. 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.

Consumer Commission are set up for giving quick Relief

**Emaar MGF Land Ltd. & Anr. v. Balvinder Singh<sup>445</sup>**

**Facts:** The Supreme Court criticized the National Consumers Disputes Redressal Commission for its long delay in assigning reasons for dismissing an appeal. The Commission, in this case, in its order dismissing an appeal

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445 MANU/SF/0084/2017.

stated that a reasoned judgment will follow. But the Court found that no such reasoned judgment followed even after a year lapsed. In the meanwhile, it also dismissed an application for review of the order on the ground that since the main appeal has been dismissed and reasons are yet to be given the review application is not maintainable.

**Decision:** The Court in this case said that it cannot appreciate this system of adjudicating appeals whereby an appeal is dismissed without giving reasons and reasons are not given for such a long period of time. The Court said this is not the way the Commissions are required to function. These Commissions have been set up with a view to give quick relief to the parties and if reasons are not given for years on end then the whole purpose of setting up such Commissions is thwarted.

Consumer Forum has jurisdiction to adjudicate the legitimacy of statutory dues

**Urban Planning and Development Authority and Ors. v. Vidya Chetal and Ors.<sup>446</sup>**

**Facts:** The reference filed in respect of correctness of the judgment rendered in the case of *HUDA v. Sunita*, wherein it was held that the National Consumer Disputes Redressal Commission had no jurisdiction to adjudicate the legality behind the demand of composition fee and extension fee made by HUDA, as same being statutory obligation, does not qualify as deficiency in service.

**Issue:** Whether the Consumer forum has jurisdiction to adjudicate the legality behind the demand of composition fee and extension fee made by HUDA?

**Decision:** The Supreme Court observed that it was a clearly established principle that certain statutory dues, such as fees, can arise out of a specific relation. Such statutory dues might be charged as a quid pro quo for a privilege conferred or for a service rendered by the authority. There were exactions which were for the common burden, like taxes, there were dues for a specific

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<sup>446</sup> AIR 2019 SC 4357.

purpose, like cess, and there were dues in lieu of a specific service rendered. Therefore, it was clear from the above discussion that not all statutory dues/exactions were amenable to the jurisdiction of the Consumer Forum, rather only those exactions which were exacted for a service rendered would be amenable to the jurisdiction of the Consumer Forum. The determination of the dispute concerning the validity of the imposition of a statutory due arising out of a deficiency in service, could be undertaken by the consumer fora as per the provisions of the Act. The decision of this Court in the case of Sunita, wherein it was held that NCDRC had no jurisdiction to adjudicate the legitimacy of the statutory dues, was rendered without considering any of the previous judgments of this Court and the objects of the Act. Consequently, the law laid down in the said case did not hold good before the eyes of law, and was thereby overruled.

Contesting of elections by member of consumer forum

**Smt. Umme Ammara v. State of U.P. and others<sup>447</sup>**

**Facts:** In this case, the Petitioner applied to contest elections despite holding an office in the District Consumer forum. After approval from the Hon'ble the Governor, the Petitioner was removed as Member of the District Consumer Forum, Jyotiba Phule Nagar, on the ground that she contested the elections of the Legislative Assembly of the year 2007, as an independent candidate without disclosing in the nomination paper, that she is holding the office. The Petitioner contested that she sought approval in the form of a letter from the chairman of the state consumer forum, and only when she did not receive any reply did she contest the elections.

**Decision:** The Allahabad High Court held that, “The Petitioner took a chance to contest the elections. There was no question of seeking guidance or permission for her to contest the elections, holding the office of a member of District Consumer Forum on full time basis, especially when the clear instructions were circulated that no member (full time) of the Consumer Forum can contest the elections. The filing of nomination and taking part in the elections, in which the votes were cast in her favour as a sitting full time

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<sup>447</sup> 2010 SCC OnLine All 1380.

member of the District Consumer Forum, amounts to abuse of her position under Rule 3 (5) (e) of the U.P. Consumer Protection Rules, 1987, so as to render her continuance in office prejudicial to public interest. Her conduct clearly fell within the grounds on which she could be removed from office.”

Declaration of rule as unconscionable or illegal by consumer forums

**Ajay Kaila v. Air India Ltd.**<sup>448</sup>

**Facts:** The complaint was regarding delay in a flight. The Guidelines of Air India were referred to, which dealt with flight irregularities. The National Commission held that Air India was required to display prominently display the Guidelines at every airport in the country and also publish a summary in a newspaper. Opposite Party's plea is that in *Homeopathic Medical College and Hospital, Chandigarh v. Miss Gunita Virk* [I (1996) CPJ 36 (NC)] it was held that Consumer Forum did not have jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal. Referring to its recent decision in *Nipun Nagar v. Symbiosis Institute of International Business* [I (2009) CPJ 3 (NC)]

**Decision:** It was observed that the Commission had held that (under certain circumstances) it was unjust to collect fees for the total period of the course and dismissed the petition.

Defective goods and manufacturing defects

**Mercedes Benz India Private Limited v. Prince Bansal**<sup>449</sup>

**Facts:** Prince Bansal, purchased a Mercedes Benz car from M/s Joshi Auto Zone Pvt. Ltd, dealer of Mercedes Benz India Private Limited for a consideration of Rs. 37 lacs. Within a few days of its purchase, the car started creating noise when it had run only 1424 kms. It was inspected by the dealer and thereafter shockers were replaced. Then it was again taken to the workshop on noticing sounds coming from its doors, and some adjustments were done. The sunroof of the car was also adjusted when noise from the cabin was

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448 2008 SCC OnLine NCDRC 47.

449 First Appeal No. 830 of 2019.

noticed. There was also a cut found on the front tyre which was replaced, when the car had run 4140 kms. Again, there was noise from the cabin of the vehicle and the sunroof had to be adjusted again. The vehicle again gave problem when it had run 7961 kms and seal frames of the doors, as well as the sunroof, were replaced. Thereafter, the doors and bidding had to be adjusted, when the vehicle had run 7971 kms. Faced with persistent problems with the car, the Complainant got the same inspected from Grace Auto motives who gave an inspection report opining that there seemed to be an “inherent manufacturing defect” in the vehicle which the manufacturer was unable to locate and rectify. Being aggrieved, the Complainant approached the concerned District Forum by way of a consumer complaint seeking replacement of the car or in the alternative, refund of the amount he had paid for the purchase of the car along with compensation. The State Commission, had directed the company to pay a sum of Rs. 2 lacs as compensation to the Complainant along with cost of litigation quantified at Rs. 22,000/-. It had relied on the expert committee report comprising of Prof. Sushant Samir, Prof. Gopal Dass and Prof. Ankit Yadav of Punjab Engineering College, which had detected a creaking noise of small intensity emanating from the rear door of the vehicle in question during its test drive. On being aggrieved by decision of State Commission Respondent have approached NCDRC.

**Issue:** Whether complainant is entitled to compensation?

**Decision:** The NCDRC held that, “The State Commission was fully justified in relying upon the expert report given by Professors of Punjab Engineering College (deemed University). They submitted a report that the problem in the vehicle still persisted and had not been removed. On relying of the said report NCDRC directed Mercedes Benz to pay Rs. 2 lakh to its customer as compensation for defects in the Mercedes vehicle.

**GMMCO Limited v. Ecovinal International Private Limited,**<sup>450</sup>

**Facts:** The Respondent purchased a 250 KVA Cat Diesel Generator Set from the Appellant. When the afore-stated generator set was installed at the

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<sup>450</sup> 2015 (2) RCR (Civil) 1011.

factory premises of the Respondent at Kunigal, it was found to be defective. The Respondent brought the defects in the generator set to the notice of the Appellant, and asked the Appellant to either repair the same or to replace the generator set. The communication addressed by the Respondent to the Appellant did not receive any response from the Appellant. It is therefore, that the Respondent issued a legal notice to the Appellant. The Appellant did not respond to the legal notice.

**Issue:** Whether Respondent is entitled to compensation in relation to the installation of defective goods?

**Decision:** The provisions of the Act are inapplicable in respect of any commercial activity other than for self-employment, and for earning an individual livelihood. It was submitted, that the pleadings from the complaint filed by the Respondent clearly establish, that the diesel generator set purchased by the Respondent was neither for self-employment nor for earning an individual livelihood. It was ruled that the Respondent is not entitled to remedy.

**Hindustan Motos Limited v. Ashok Narayan Pawar and another<sup>451</sup>**

**Facts:** Shri. Ashok Narayan Pawar, Executive Engineer, Irrigation Department, Dhule, Maharashtra, purchased 4 Ambassador cars from the M/s Hindustan Motors Ltd. Calcutta-OP-1, M/s Hindustan Motors Ltd., New Delhi-OP-2 through the Kailas Agencies (P) Ltd. OP-3, on 12<sup>th</sup> June 1998. In one of the Cars, bearing No. MH-18-E/400, Shri. Ashok Narayan Pawar the Complainant was going with other officers to visit percolation tank of Abhanpur Tq. Shirpur, Dist. Dhule. Out of blue, the car suddenly caught fire, in engine. The lives of all the above said officers, including the Complainant were saved. Information was given to the fire brigade. However, before the fire brigade reached there, the car was wholly burnt. The Police were informed. The Police prepared the Panchnama on the same day. The vehicle was totally burnt and reduced to ashes. The OPs were informed. The OPs were asked to replace the car which was burnt within 4 months from the date of purchase, due to manufacturing defect.

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<sup>451</sup> 2015 SCC OnLine NCDRC 3.

**Issue:** Whether there was a manufacture defect in the car?

**Decision:** The Opposite Parties are directed to provide a new car to the Complainant. In case they have stopped manufacturing this car, in that eventuality, they will pay the current price of the car, along with 9% interest from the date of incident, till its realization. If they choose to give him new car, they are also liable to pay compensation in the shape of interest @ 9% p.a., from the date of incident, till its realization, to the Complainant.

**Ram Kunwar v. Dealer Jai Durga Tractor** <sup>452</sup>

**Facts:** The case of the Petitioner is that at the instance of Respondent No. 2 who is related to him, purchased a tractor from Respondent No.1 Jai Durga Tractors on 09.10.2013 for a price of Rs. 5,40,000/- and paid a sum of Rs. 1,40,000/- to Respondent No.1 out of which Rs. 25,000/- were withdrawn by him from his account in Punjab National Bank. According to the Complainant, when he used the tractor for agricultural purposes, it was found to be defective and the said defect could not be rectified. He claims to have entered into an agreement with Respondent No. 1 on 09.10.2013. This is also his case that on 22.10.2013, he took the tractor to the showroom of Respondent No. 1 where the keys of the tractor was deceitfully obtained from him and thereafter the tractor was either sold or it was hidden somewhere. The Petitioner therefore approached the concerned District Forum by way of a consumer complaint. The Respondent No. 1 alleged that the tractor was not purchased by the Complainant but was taken by him for a day or two, promising to either purchase the same or return it within two days but the Complainant neither returned the tractor nor did he pay its sale consideration. The Complainant wanted to purchase the tractor at the sale consideration amount of Rs. 4,40,000/- but the Respondent refused the same. Thus the tractor was retained by the Respondent No. 1. The Respondent No. 2 also denied the knowledge of any transactions between the Complainant and Respondent No. 1. The District forum delivered a split verdict, the president dismissing the complaint and the Members of the said forum allowing the complaint. The Respondent No.1 preferred an appeal before

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452 MANU/CF/0672/2018.

the State Commission. The State Commission dismissed the appeal. Being aggrieved, the Petitioner filed the present Revision Petition before the National Commission.

**Issue:** Whether the Tractor claimed to be defect, is owned by the Petitioner?

**Decision:** The National Commission observed that the case of the Petitioner as set out in the consumer complaint is that the price of the tractor was Rs. 5,40,000/- and he had paid Rs. 1,64,000/- to Respondent No. 1. The Petitioner does not have any invoice, of the sale of the tractor. In the ordinary course of business, a tractor will be sold only against an invoice and not without execution of any document of sale. Coming to the agreement on which reliance is placed by Respondent No. 1, on a perusal of the said document; I find that nowhere it is signed on behalf of Respondent No. 1 Jai Durga Tractors. This becomes important in the light of facts and petitioner / Complainant does not have either any receipt evidencing any payment to Respondent No. 1 nor does he has any invoice evidencing the alleged sale of tractor by him. In these circumstances, the complaint does not appear to be correct and bonafide. The view taken by the State Commission therefore, does not call for any interference by this Commission in exercise of its revisional jurisdiction. The revision petition being devoid of any merit is hereby dismissed.

**C.N. Anantharam v. Fiat India Ltd. and Ors. etc.<sup>453</sup>**

**Facts:** The Complainant filed a complaint relating to noise from the engine and the gear box, there was no other major defect which made the vehicle incapable of operation, particularly when the engine was replaced with a new one.

**Issue:** Whether there was a manufacturing defect in the engine of the vehicle?

**Decision:** In addition to the directions given by the National Commission, the Supreme Court directed that if the independent technical expert is of the opinion that there are inherent manufacturing defects in the vehicle, the Petitioner will be entitled to refund of the price of the vehicle and the lifetime

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<sup>453</sup> AIR 2011 SC 523.

tax and EMI along with interest @ 12% per annum and costs, as directed by the State Commission. The decision of the court is strongly appreciated for upholding higher standards of product liability in India. With the industrial growth and numerous manufacturers producing varied products, higher standards are an imperative.

**Raj Hans Towers (P) Limited v. Anuradha Mishra<sup>454</sup>**

**Facts:** The Complainant/Respondent booked a residential flat with the Appellant in a project, namely, 'Rajhans Premier Apartment'. Flat No. 604 in Block – C, measuring 3775 sq.ft., was allotted to the Complainant for a basic price of Rs. 20,50,000/-. The possession of the flat was to be delivered by December 2006. The possession, however, was not delivered despite the Complainant having paid Rs. 21,50,000/- to the Opposite Party after taking loan from ICICI Home Finance Co. Ltd. It was also stipulated in the agreement between the parties that in the event of delay, the builder will pay Rs. 5 per sq.ft. per month as penalty for the delayed period. Being aggrieved from the failure of the builder to deliver possession, the Complainant approached the concerned State Commission by way of a consumer complaint. She also alleged that an excess amount of Rs. 335932/- has been charged from her. Compensation for mental agony caused to her by the Appellant as also rental for the period the possession was delayed were also sought. The State Commission held that the Appellant had charged an excess amount of Rs. 224182/- from the Complainant. Therefore, it directed refund of the aforesaid amount along with a sum of Rs. 103125/- as compensation for the delay in delivery of possession. The compensation was calculated @ Rs. 5 per sq.ft. per month as per the agreement between the parties. A sum of Rs. 50,000/- was awarded to the Complainant for the mental agony and harassment suffered by her. The cost of litigation was quantified at Rs. 5,000/-. Being aggrieved from the order passed by the State Commission; the Appellant is before this Commission contending that the Complainant was liable to pay a sum of Rs. 335932/- .

**Issue 1:** Whether the Complainant is liable to pay a sum of Rs. 3,35,932/-?

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454 2018 SCC OnLine NCDRC 289.

**Issue 2:** Whether there is any deficiency in Service?

**Decision:** The National Commission upheld the decision of the State Commission that the flat at the time it was delivered to the Complainant had several defects in it. It was noted by the State Commission that the Appellant had filed its letter dated 19.7.2010 stated that most of the points were rectified or not appropriately mentioned meaning thereby that there were defects which were allegedly rectified by the Appellant. The State Commission in this regard also perused the photographs which the Complainant produced before it and which revealed the defects in the construction of the flat, and in light of the above the National Commission dismissed the Appeal.

Deficiency In Services

**Regional Transport Officer v. Arun Kumar and ors.<sup>455</sup>**

**Facts:** The factual matrix of the case, in hand, is that Opposite Party no. 1, who was the Complainant before the District Consumer Disputes Redressal Forum, was the registered owner of a Mini Bus having registration no. OR-06 B 1271 and was granted permit by State Transport Authority, Odisha, Cutack to ply the bus. The said permit was valid for 119 days starting from 16.01.2005 to 14.05.2005. But, Opposite Party no. 1 could not ply his vehicle because of strong opposition from the existing and/or old permit holders of Dhenkanal Bus Owners Association on the route specified in the permit. Opposite Party no. 1 brought the said fact to the notice of the Collector, Superintendent of Police and RTO, Dhenkanal and because of intervention of the Superintendent of Police, at a belated stage, he could run the bus only for a period of 15 days out of the total period of 119 days. Before expiry of the road permit, Opposite Party no. 1 applied for fresh permit before the RTO, Dhenkanal, as the bus in question was having sitting capacity of less than 25 persons. It is alleged that due to negligence on the part of the petitioner, Opposite Party no. 1 could not ply his vehicle. The deficiency of service was brought to the notice of the District Consumer Disputes Redressal Forum, who in turn, directed the Petitioner to refund the road tax, which

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455 2020 SCC OnLine Ori 32.

had been collected thrice from Opposite Party no. 1 for the same quarter, and awarded compensation of Rs. 30,000/- in favour of Opposite Party no. 1 to be paid within 30 days from the date of order. The Petitioner being the Opposite Party 2 before the DCDRF Dhenkanal, has filed this writ petition to quash the order dated passed by the District Consumer Disputes Redressal Forum.

**Issue:** Whether the District Consumer Dispute Redressal Forum has jurisdiction to pass order on the basis of complaint which involves Motor Vehicle Act, lodged by the Respondent under Sec. 12 of the Consumer Protection Act?

**Decision:** Court held non-plying of bus, in spite of valid permit is a matter under the Motor Vehicle Act, 1988 and Rules framed thereunder. Granting of permit is a statutory function conferred upon the statutory authority under the said Act and Rules framed thereunder. Consequentially, if any tax has been deposited, in that case, the permit holder is obliged under law to deposit the same. Therefore, any person aggrieved by any omission or commission on the part of the permit granting authority can prefer appeal/revision before the specified authority under the statute. The M.V. Act is a self-contained code and provides appealable and revisable forums under the statute. If for any reason, the Petitioner could not be able to ply the vehicle, after having deposited tax for that purpose, and claimed for refund of the same, he has to approach the competent forum under the M.V. Act and Rules framed thereunder. The permit granting authority is not a service provider and, therefore, the person, who makes an application to the said authority for permit, is not a consumer. Refund of tax is governed by the provisions of Orissa Motor Vehicle Taxation Act, 1975 and Orissa Motor Vehicle Taxation Rules, 1976. Opposite Party no. 1 paid the tax in view of the statutory provisions governing the field. As such, granting of permit and collection of tax from motor vehicle is all statutory in nature and the said functions are not discharged for consideration. It appears, the Consumer Disputes Redressal Forum, Dhenkanal has lost sight of the provisions contained under Section 3 of the Consumer Protection Act, which is extracted hereunder "***Act not in derogation of any other law.- The provisions of this Act shall be in addition to***

*and not in derogation of the provisions of any other law for the time being in force.”* From the above discussion, court finds that Consumer Protection Act is not applicable here in this case.

**Development of software as a good under Consumer Protection Act, 1986**

**Birla Technologies Limited v. Neutral Glass and Allied Industries Limited<sup>456</sup>**

**Facts:** The Appellant had sent a detailed proposal for developing certain computer software for the Respondent at a cost of Rs. 36 lacs on 11.2.1998. This proposal was accepted by the Respondent who sent the letter of intent indicating its intention to entrust the Appellant with the development of the said software. On 1.4.1998, the Respondent sent a purchase order to the Appellant regarding the terms and conditions at which the Appellant was to develop the software for the Respondent. That software was to take care of (1) Financial Accounting, (2) Production, (3) Marketing, (4) Purchase, (5) Stores/Inventory, (6) Fixed Assets, and (7) Pay Roll and Personnel System. The Appellant wrote to the Respondent on 3.2.1999 informing that the Stores and Purchase Modules had been installed in the Respondent’s office on 1.2.1999. The Appellant wrote on 4.2.1999 to the Respondent that since the Respondent’s requirements for the Marketing Module had gone up considerably in comparison with what had been initially agreed between the parties, the Appellant would require additional 250 man hours to complete. On 26.2.1999, the Appellant informed the Respondent that three Modules had been successfully installed, they being, (1) Stores, (2) Purchase, and (3) Production. Again on 17.3.1999, the Appellant confirmed that even the Financial Accounting Module was also successfully installed. Further, the Appellant wrote to the Respondent that in view of the additional requirements of the Respondent, it would require 350 man hours more. On 30.3.1999, the Appellant informed the Respondent that the changes suggested by the Respondent had been successfully carried out. The Appellant informed the Respondent again that due to the addition of 48 new functions to the Marketing Module, the estimation for the Module had gone up by 45 man

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<sup>456</sup> (2011) 1 SCC 525.

days, costing an additional Rs. 60,000/-. On 7.4.1999 and 13.4.1999, the Appellant informed that the Stores and Purchase Module and Financial Accounting and Marketing Modules were also installed respectively on those dates and sought for their feedback. Thereafter, there was a lot of correspondence between the parties as regards the work of the said software and in respect of the different Modules. It seems, at times, the Respondent/ Complainant expressed its satisfaction over the working of the Modules. All this happened in the last months of 1999 and in January, 2000. It seems that till February, 2000, the payment of the Appellant was not released requiring the Appellant to write to the Respondent for the same. The Respondent thereafter started complaining about the working of some Modules. In the month of September, 2000, the Respondent placed a fresh purchase order with the Appellant for enhancement of the Production Module, on which the Appellant requested the Respondent to clear the outstanding dues which were not cleared till then. The Appellant again wrote to the Respondent for payment in the month of April, 2001. The disputes started taking ugly shape and the Respondent started complaining about the working of various Modules. On 15.4.2002, the Respondent wrote a letter to the Appellant identifying the problems with various Modules of the software, which letter was replied to by the Appellant. There was then lot of correspondence between September, 2002 and March, 2003 as regards the Modules supplied. The Respondent, however, sent a legal notice to the Appellant through its Advocate on 4.4.2003, wherein it alleged deficiency in services rendered by the Appellant with respect to all seven Modules developed by the Appellant.

**Issue:** Whether the development of a software for a company amounts to ‘goods’ and that such goods are purchased for commercial purpose of earning more profits?

**Decision:** The Supreme Court held that the development of a software for a company amounts to ‘goods’ and that such goods are purchased for commercial purpose of earning more profits. The decision seems be in line with the strict interpretation of the statue. However, it leaves no recourse for the company for defect and deficiency except in contract law, which defeats

the objective of the Consumer Protection Act. For a strong liability regime to be outlined, the remedy should be available to the final consumer (whoever they might be).

Eligibility criteria for President of consumer forum

**P. Subburaj v. The State President cum Chairman, Selection Committee<sup>457</sup>**

**Facts:** The Petitioner is a practicing advocate and was appointed one time as President of the District Consumer Redressal Forum at Madurai and thereafter at Namakkal. He had filed the present Writ Petition seeking for a direction to the State Government to consider the representation dated 14.10.2010 and to re-appoint him as President of the District Consumer Disputes Redressal Forum as per the proviso to Section 10(2) of the Consumer Protection Act, 1986. High Court held that the directive issued by the National Commission under Section 24B of the Consumer Protection Act cannot be said to be contrary to the provisions of Section 10(1-A) of the Consumer Protection Act. All that the directive says is that precedence should be given to the District Judges or retired District Judges having regard to the experience gained by them in discharge of their duties as Judicial Officer. If serving or retired District Judges are not available, it is always open to the Committee to make appointments from amongst advocates, and it is not correct to say that the advocates are excluded from consideration for the post of President of the District forum. The National Commission has issued this directive keeping in view the purpose sought to be achieved by enactment of Section 10(1A) and in the interest of better administration of the District forum.

Failure to follow fair and transparent procedure

**Cholamandalam Investment Finance Co.ltd and Anr. v. Hemant Balchand & Anr<sup>458</sup>**

**Facts:** The Complainant/Respondent no. 1 purchased a tractor and got the same financed from the Petitioner company by taking a loan of

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457 2011 SCC OnLine Mad 946.

458 2018 SCC OnLine NCDRC 1250.

Rs. 4,65,000/-. The tractor was purchased for a price of Rs. 7,30,000/-. The loan taken by the Complainant was repayable in instalments. The Complainant paid a total amount of Rs. 2,65,000/- to the Petitioner but thereafter, defaulted in payment of the fourth instalment due to his bad financial condition and therefore, the Petitioner allegedly took forcible possession of the tractor without any prior notice and kept the same at an anonymous place. Thereafter, a notice was issued to the Complainant demanding a sum of Rs. 1,11,290/-. When he reached the office of the Petitioner for payment of the said amount, the Petitioner refused to accept the same and told him that the tractor had been sold to another person. The Complainant therefore, approached the concerned District Forum seeking compensation on account of the aforesaid deficiency in the service rendered to him by the Petitioner. The Petitioner contended that they had issued a final call letter dated 01.09.2015 to the Complainant for deposit of Rs. 1,03,428/- out of which he deposited only Rs. 88,000/- on 12.09.2015 and refused to deposit the balance amount, where upon the Seizing Department seized the tractor as per the loan agreement and informed the concerned Police Station in this regard. A notice was thereafter, issued to the Complainant giving him an opportunity to deposit the balance amount but he did not pay the same and the tractor was therefore, sold on 29.04.2016. The District Forum directed the Petitioner to pay a sum of Rs. 2,50,000/- as compensation to the Complainant. Being aggrieved from the order passed by the District Forum, the Petitioner approached the concerned State Commission by way of an appeal. The said appeal having been dismissed; the Petitioner is before this Commission.

**Issue:** Whether there was any deficiency of Services on the part of the Petitioner?

**Decision:** The National Consumer Dispute Redressal Commission observed that since the Complainant had defaulted in payment of the loan taken by him, the tractor was rightfully seized in terms of the agreement executed between the parties and after following the due procedure i.e. approaching a Civil Court for taking possession of the same as per the terms of the agreement executed between the parties. The Petitioner could not have taken

the law into its own hands and could not have taken forcible possession of the tractor even if the outstanding amount had not been paid to it within the time stipulated in this regard. Therefore, the Petitioner was deficient in rendering service to the Complainant by not following the due process of law for repossession of the tractor. It is also put forth that the tractor was purchased for a consideration of Rs. 7,30,000/- . It was sold by the Petitioner within about two years, for a paltry consideration of Rs. 2,79,000/- . This is a clear indication that a fair and transparent procedure was not followed for selling the tractor and that is why it fetched such a less price within a short time span of about two years. In view of the observation the Commission held that the Concurrent order passed by the District Forum and State Commission does not call for any inference by this Commission in exercise of its revisional jurisdiction. The revision petition is therefore, dismissed.

False claims by complainant

**Noor Islam Mondal v. Anklist Exim Inc. and others<sup>459</sup>**

**Facts:** Petitioner's purchased a gold testing machine from Respondent/ Opposite Parties for a consideration of Rs. 13,72,750/- , after obtaining loan under PMEGP 2010 – 2011 Scheme, he found that the machine was not giving right reading regarding clarity of the gold. Therefore, he informed Respondents for removing the defects in the said machine. But, Respondents did not respond. Ultimately, Petitioner served letter upon Respondents requesting him to supply one gold testing machine of same description within seven days but that too remained unheeded. Having no other alternative, Petitioner filed a consumer complaint before the District Consumer Disputes Redressal Forum, Howrah (for short, 'District Forum') praying for direction to the Respondents to refund Rs. 13,72,750/- , including interest thereon and to pay Rs. 3,00,000/- towards compensation. But Respondents denied all the material allegations stating inter alia, that complaint case was not maintainable for lack of territorial jurisdiction. It was stated that Petitioner had earlier filed a complaint case before the District Forum, Hooghly on the same cause of action, which was rejected by the District Forum, Hooghly,

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<sup>459</sup> MANU/CF/0891/2014.

for lack of territorial jurisdiction. District Forum allowed the complaint and passed the following directions. The O.P. no. 3 be directed to replace the old machine by a new one with same model and same specification together with guarantee certificate for at least 06 months from the date of replacement of the machine or alternatively refund the entire amount (sell value) of Rs. 13,72,750/- (cost of purchase of gold testing machine) within 30 days from the date of this order. The dilatory tendency of the O.P. no. 3 for not attending the fault rectification for more than one year the O.P. is saddled with a cost of Rs. 50,000/-. The cost so realized, 50% of the same (Rs. 25,000/-) shall be deposited to the Consumer Welfare Fund and the rest to be received by the Complainant. The O.P. no. 3 do pay a compensation of Rs. 25,000/- to the Complainant for causing prolonged pain and harassment. The Complainant is further entitled to litigation costs of Rs. 5,000/-.” Being aggrieved, Respondents filed appeal before the State Commission, which partly allowed the appeal. It directed the Respondents to pay Rs. 50,000/- towards compensation and Rs. 5,000/- towards litigation cost to the Petitioner. Aggrieved by the order of the State Commission, Petitioner has filed this petition.

**Issue 1:** Whether Petitioner made false averments before the forum?

**Issue 2:** Whether Petitioner is entitle for compensation?

**Decision:** The Commission held that if any litigant approaches any Judicial Fora by making false assertions in its complaint and tries to mislead the Judicial Fora, then such litigant is not entitled to any relief in equity. Such petition should be thrown away at the threshold itself. The present petition is hereby dismissed with punitive damages of Rs. 50,000/- for making false averments in the complaint and also for casting uncalled aspersions on the State Commission. Petitioner is directed to deposit the cost by way of demand draft in the name ‘Consumer Legal Aid Account’ of this Commission, within four weeks from today. In case, he fails to deposit the cost within the prescribed period, then he shall be liable to pay interest @ 9% p.a., till realization.

Grant of Incentives By Government Under EXIM Policy Is Not A ‘Service’ Within The Meaning Of Consumer Protection Act

**The Secretary, Ministry of Commerce and Ors. v. Vinod and Company<sup>460</sup>**

**Facts:** Respondent carried out exports from 1988 to 1993. The Respondent applied for the grant of an REP licence in the f.o.b. value of Rs. 6,16,116/- for which it was entitled to a premium of 20 per cent on the amount of exports under the scheme. Since the scheme for the issuance of REP licence was discontinued, the premium of Rs. 1,23,223/- was not paid. The Respondent received an intimation that the Additional Chief Controller of Imports and Exports had passed an order on 3 September 1991 holding in abeyance the grant of premium from February 1988 to August 1992 which was further extended to 31 March 1993. The Respondent filed an appeal before the Appellate Committee of the Ministry of Commerce. The Respondent made unsuccessful attempts for the release of the premium and was informed that the scheme had been closed as a result of which the claim could not be entertained. This led to the institution of proceedings before the District Consumer Disputes Redressal Forum at Delhi. The District Forum allowed the claim by directing that an amount of Rs. 1,23,223/- be paid over to the Respondent together with compensation for mental agony and towards legal expenses. Appellants were set down ex-parte before the District Forum. Their appeal before the State Consumer Disputes Redressal Commission was rejected. This was confirmed in revision by the National Consumer Disputes Redressal Commission on 4 April 2012.

**Issue:** Whether a person who has made a claim under an REP licence issued in terms of the import and export policy is a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 & Whether in providing benefits under terms of the Exim policy, government rendered a ‘service’ so as to make it amenable to jurisdiction of consumer fora established under the Act?

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460 MANU/SC/0926/2019.

**Decision:** The Supreme Court analysing the definition of expression, consumer disputes, defect, deficiency, consumer, and services allowed the appeal and held that the objects of the policy are essentially to stimulate industrial growth by providing easy access to imported capital goods, raw materials and components, to substitute imports and promote self-reliance and to provide an impetus to exports by improving the quality of incentives. The Exim policy is an incident of the fiscal policy of the State and of its overall control over foreign trade. As an incident of its policy, the State may provide a regime of incentives. The provision of those incentives does not render the State a service provider or the person who avails of the incentives as a potential user of any service. The State, in exercise of its authority to utilise and collect revenue, puts in place diverse regulatory regimes under the law. The regime may provide for modalities for compliance, penalties for breach and incentives to achieve the purpose of the policy. The grant of these incentives does not constitute the State as a service provider. Accordingly the judgement of NCDRC is set aside.

Improper discharge of duties by passport officer

**Regional Passport Officer, Bangalore v. Anuradha Thadipathri Gopinath<sup>461</sup>**

**Facts:** In this case, there was negligence on the part of the Passport Officer in not signing the passport at the time of its issuance. Visa was also issued on the said passport. District Forum allowed the complaint in part and directed the petitioner to pay compensation of Rs. 10,000/- and costs of Rs. 2,000/- to the complainant. Therefore, the revision petition was filed.

**Decision:** The National Commission held that the Passport Officer, while issuing passport, was discharging a statutory duty and was not exercising any sovereign function. Further, issuance or non-issuance of a passport may be a statutory duty and may not be a consumer dispute but issuance of an invalid passport which is not signed by the Passport Officer, would be deficiency in service on the part of the concerned officer as defined under Section 2(1)(g) of the Consumer Protection Act which defines 'deficiency'. the Petitioner is

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<sup>461</sup> 2008 SCC OnLine NCDRC 44.

charging fee for issuance of passport and, hence, service is availed by paying fee. A passport, which is issued without the signature of the Competent Authority, is on the face of it invalid which would have placed the Complainant in a precarious position and she might have been hauled up for various offences if she had tried to go abroad on that passport. Such lapse amounts to a serious deficiency in discharge of duties, which is in the nature of rendering of service, hence, the complaint is maintainable.

Improper discharge of duties by Provident Fund Commissioner

**Regional Provident Fund Commissioner v. Bhavani<sup>462</sup>**

**Facts:** The Respondent was an employee of a company which became a member of the Employees' Family Pension Scheme, 1971 and contributed to same. She thus, availed of the services rendered by Regional Provident Fund Commissioner for implementation of Scheme.

**Decision:** The Supreme Court held that the Regional Provident Fund Commissioner, who is person responsible for working of Pension Scheme, is a service giver and the respondent is a consumer. Also, it was not a case of rendering of free service.

Jurisdiction of consumer forums

**Accounts Officer, Jharkhand State Electricity Board v. Anwar Ali<sup>463</sup>**

**Facts:** The National Commission gave a series of findings on the Electricity Act in relation to the Consumer Protection Act. A consumer of electricity supplied by an Electricity Board, a private company or the Government is a consumer within the meaning of the Consumer Protection Act. Some sections of the Electricity Act, such as Sections 173-175, are inapplicable in as much as they are inconsistent with the provisions of the Consumer Protection Act.

**Decision:** The jurisdiction of the consumer fora are not curtailed unless there is an express provision for this. Here, the jurisdiction of consumer fora are not barred despite the setting up of special courts under the Electricity Act.

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462 AIR 2008 SC 2957.

463 2008 SCC OnLine NCDRC 24.

Jurisdiction of High Courts

**Om Prakash Saini v. DCM Ltd. and Ors.<sup>464</sup>**

**Facts:** In this case the Appellant invested in the Fully Secured Debentures floated by Respondent on failure of Respondent to pay the amount of maturity complaint was filed in State Consumer Disputes Redressal Commission which was allowed. The Respondent No. 1 challenged the Order of the State Commission by filing an appeal under Section 21 of the 1986 Act, but withdrew the same. Subsequently, Respondent filed a Writ Petition which was allowed by the High Court on the ground that the State Commission did not have the jurisdiction to entertain the complaint. Hence this appeal is filed before Supreme Court.

**Issue:** Whether the High Court committed a jurisdictional error by entertaining the petition filed by Respondent ?

**Decision:** Hon'ble SC held that, CPA,1986 was enacted by the Parliament for better protection of the interest of consumers and a wholesome mechanism has been put in place for adjudication of consumer disputes. The remedy of appeal available to a person aggrieved by an order of the State Commission be treated as an effective alternative remedy. The CPA,1986 is a special statute and a complete code in itself. In the present case, Respondent had availed the alternative remedy available to it under Section 21 by filing an appeal against the order of the State Commission but during the pendency of the appeal, Respondent chose to challenge the order of the State Commission by filing a petition under Article 227 of the Constitution, which was entertained by the learned Single Judge on the basis of the assurance given by the Respondent that the appeal filed before the National Commission will be withdrawn. No reasons were recorded as to why High Court thought it proper to make a departure from the rule that the High Court will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person. Thus, during the pendency of the appeal filed by Respondent under Section 21 of the 1986 Act, the High Court was not at all justified in

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464 (2010) 11 SCC 622.

entertaining the petition filed under Article 227 of the Constitution and Appeal allowed.

Liability of manufacturers

**Jagrut Nagrik and others v Proprietor, Baroda Automobiles Sales and Service, Vadodara, Gujarat and others.<sup>465</sup>**

**Decision:** The National Commission held that “the manufacturer of the car as well as the sales and service dealer is liable to pay. However, if in the reckoning of the manufacturer, under some agreement, the liability to pay is only that of the dealer alone on the strength of such agreement it will be for them to work out the remedy for realization of the amount in case the amount is recovered from them.” This case strengthens product liability and is greatly appreciated for creating a strict liability regime.

Malls, Multiplexes Cannot Charge Parking Fee

**Ruchi Malls Pvt. Ltd. v. State of Gujarat<sup>466</sup>**

**Facts:** The traffic police inspector issued a notice informing mall owners that the collection of parking charges was violative of the GDCR and the Building Use (BU) Permission granted to them. Following this, the mall authorities filed a writ petition before Gujarat High Court. The single bench judge accepted the contention of the mall owners that GCDR did not mandate giving of ‘free’ parking space and quashed the orders of traffic police. It observed that parking fee cannot be exorbitant and proceeded to issue a direction for framing a guideline to regulate parking fee. Against this direction, the mall owners approached the Division Bench.

**Issue:** Whether malls & multiplexes can charge parking fees?

**Decision:** The Division Bench held that the single judge was in error in holding that mall owners could collect parking fee. It did not agree the contention that collecting parking fee was part of their fundamental right to trade and business under Article 19(1)(g) of the Constitution of India and

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<sup>465</sup> 2010 Indlaw NCDRC 252.

<sup>466</sup> MANU/SCOR/01702/2019.

noted that it is the statutory duty of the owners under the building regulations such as GDCR framed under the provisions of Gujarat Town Planning and Urban Development Act, 1976, and the Gujarat Nagarpalika Act, 1963 to provide parking space. Consequently the appeals were disposed of with the observation that the traffic police authorities were entitled to enforce their orders against the mall owners regarding parking fee.

Necessity of passing reasoned order

**Kranti Associates Pvt. Ltd. and Anr. v. Sh. Masood Ahmed Khan and Ors.<sup>467</sup>**

**Facts:** In this case the National Consumer Disputes Redressal Commission dismissed the Revision Petition of the Appellants by just affirming the order of the State Commission, without giving any reasons. Hence present Appeal is filed.

**Decision:** The Hon'ble Supreme Court held that, the National Commission a high-powered quasi-judicial forum for deciding disputes between the parties. It is necessity of giving reason by a body or authority in support of its decision had been emphasized in many judicial precedents. The reasons must reveal a rational nexus between the materials which are considered and the conclusions reached. The quasi-judicial authority must record reasons in support of its conclusions as it not only serves the wider principle of justice. The National Commission ought to give reasons. The matter remand back to forum for deciding the matter by passing a reasoned order and Appeal allowed.

No appeal against NCDRC order passed in Execution Proceedings is maintainable

**Ambience Infrastructure Pvt. Ltd. v. Ambience Island Apartment Owners<sup>468</sup>**

**Facts:** The NCDRC, in its original judgement, had directed the Appellants to pay 70% of the maintenance charges with interest @ 9% per annum within

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467 (2010) 9 SCC 496.

468 2020 SCC OnLine SC 1051.

90 days. This order was passed in the Execution Petition. The grievance of the Appellants is that since the complaint before the NCDRC pertained only to the deficiency in service as regards the provision of lifts, the order of the NCDRC directing the payment of 70% of the total maintenance amount, as opposed to 70% of the maintenance charges collected for lifts, is contrary to the tenor of the complaint and the original order. An objection has been raised with regard to the maintainability of the appeals.

**Issue:** Whether an appeal against NCDRC Order passed in Execution Proceedings is maintainable or not?

**Decision:** The Court relied on Section 23 of the Consumer Protection Act 1986 and observed that an appeal under Section 23 is maintainable against an order which has been passed by the NCDRC on a complaint where the value of the goods or services and compensation, if any claimed, exceeds the threshold which is prescribed. The Court stated that execution proceedings are separate and independent from original proceedings as observed in the case of *Karnataka Housing Board v. K.A. Nagamani* ((2019)6 SCC 424). Thus, the Court dismissed the appeal stating that the appeal won't lie under section 23 against an order which has been passed in the course of execution proceedings.

Non-maintenance of elevator

**Rashmi Handa v. OTIS Elevator Company (India) Ltd.<sup>469</sup>**

**Facts:** The deceased who was working as Director, Research and Analysis Wing under the Cabinet Secretariat where his death occurred due to an accident which was a result of elevator malfunction, NCDRC awarded more than Rs. 3 crore as compensation and damages. The deceased who was selected by the Indian Revenue Service (Customs & Central Excise Group A) in 1980, got posted on various important positions under Central Government at national as well as international levels and died while serving at the current post. The family of the deceased approached NCDRC against OTIS Elevator Company (India) Ltd. and the two government organisations,

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469 2014 SCC OnLine NCDRC 1.

Research & Analysis Wing (RAW) and Military Engineering Services (MES) for damages and compensation. In its defence, OTIS claimed that as per the maintenance contract between MES and OTIS, the employees of OTIS were not supposed to be present and put the blame on lift operators. RAW also defended itself by stating that as RAW is a ‘consumer’ of the services being provided by OTIS, NCDRC has no jurisdiction to proceed against it. It also stated that RAW is already paying a very high amount as pension dues to the family of the deceased. MES stated that there was no negligence on its part as it sent several letters, personal visits, and reminders to OTIS regarding the defect in the lift but the lift company failed to rectify defects.

**Issue:** Whether there was deficiency of service by OTIS Elevator Company (India) Ltd.?

**Decision:** After hearing all the parties, NCDRC held all three (OTIS, RAW and MES) liable for gross negligence and deficiency in service and allowed the claim of the Complainants. NCDRC said, “we allow the claim made by the Complainants in the sum of Rs. 3,01,48,195/-, jointly and severally, with interest at the rate of 9% from the date of death. The liability of OP2 (RAW) is limited to 5% of decreetal amount and liability of OP3 (MES) is limited to 25% of the decreetal amount. The rest of the amount will be paid by OP1 (OTIS).”

#### Non-maintenance of swimming pools

**Dr. Nirnjan Nath Sharma v. Bangalore Mahanagara Palika and others,**<sup>470</sup>

**Facts:** This is an unfortunate case wherein a young person, named, Smt. Smruti Ranjan Sharma, died in a Government Swimming Pool, while he was learning to swim. The present complaint has been filed by his father, Dr. Nirnjan Nath Sharma (since deceased), and the case is now represented by the LRs of the deceased Dr. Nirnjan Nath Sharma, against the Municipal Corporation of Bangalore City and owner of the Corporation Swimming Pool, Jaya Nagar, Bangalore, OP1. OP1, vide lease deed dated 17.12.2004 leased out the said swimming pool to PM Swimming Centre, OP2, on contract

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<sup>470</sup> 2014 SCC OnLine NCDRC 545.

basis for a period of 35 years. OP2 has been running the swimming pool on commercial basis by providing swimming and coaching facilities for swimmers and learners. True copy of the lease deed, Ex. C-1 has been placed on record. The said swimming pool was insured with Oriental Insurance Co. Ltd., OP3. OP2 used to conduct coaching camps in the said swimming pool and one said camp was held between 02.04.2008 and 22.04.2008. Late Smt. Smruti Ranjan Sharma got registered himself for the said coaching centre on 01.04.2008 vide application for learning swimming and paid the requisite fee of Rs. 2,200/- . He was admitted for 20 days' coaching w.e.f. 02.04.2008 between 8.45pm and 9.45 pm. The deceased was regularly attending the swimming camp. However, on 16.04.2008 due to gross negligence and deficiencies in the service of OP2, Smt. Smruti Ranjan Sharma got drowned in the swimming pool. The swimming pool was quite crowded on that day. However, there were no coaches/ life guards or other employees of OP2, present at the time of the incident and nobody noticed his drowning, except by one Dr. Venkatesh, that too, after some time. No immediate steps were taken by OP2 either to give first aid or to rush the deceased to the hospital. A Doctor (one of the Swimmers present there) gave the necessary first aid and after a long persistence, the deceased was taken to Apollo Hospital for treatment. The deceased kept on mechanical ventilation during his treatment in the said hospital. The family members of Smt. Smruti Ranjan Sharma were not informed. While undergoing treatment in the said Hospital, Smt. Smruti Ranjan Sharma, breathed his last. All records, including that of Apollo Hospital from 16.04.2008 till his death, on 19.04.2008, have been placed on record. The father of the deceased Smt. Smruti Ranjan Sharma / Complainant (now deceased) (had spent more than Rs. 5,00,000/- towards medical expenses at Apollo Hospital for the treatment during the said period. The Post-Mortem report, Death Summary, etc., Smt. Smruti Ranjan Sharma was employed with CG-Core EI Programmable Solutions Pvt. Ltd., Koramangala, Bangalore, since the past four years. On 01.07.2004, he was appointed as Application Engineer and his services were later given due recognition. At the time to death, he was earning salary of more than Rs. 9,00,000/- per annum. Copy of the appointment letter with salary structure has been filed as Ex.C-10 (Colly). The deceased was about 27 years' old at the time of his death. He was the sole breadwinner of the Complainant and his family

members. The deceased is survived by his father (the complainant, now deceased), a brother and three sisters.

**Issue:** Whether there was negligence on the part of the Opposite Parties in maintaining the swimming pool?

**Decision:** The said amount appears to be almost correct. We consider that a total amount of Rs. 2.00 crores (Rupees Two Crores only) is adequate. We, therefore, direct the insurance company/OP3, to pay a sum of Rs. 16,00,000/- to the Complainant/LRs out of the total amount of 2.00 crores. OP1 will pay Rs. 50.00 lakhs to the Complainants/ LRs, out of the total Rs. 2.00 crores, as their liability is limited upto that extent only. Rest of the amount in the sum of Rs. 1,34,00,000/- (Rupees One Crore Thirty-four Lakhs only) be paid to the Complainants/LRs, by OP2. All the OPs i.e., 1 to 3, shall pay their respective amounts to the Complainants/LRs, within 90 days' from the date of receipt of this order, otherwise, the same will carry interest @ 12% p.a. from the expiry of said 90 days', till their realization.

Problems faced by consumer forums

**State of U.P. and Ors. v. All U.P. Consumer Protection Bar Association<sup>471</sup>**

**Facts:** The facts have emerged from the interim report submitted by the Committee presided over by Hon'ble Justice Shri. Arijit Pasayat, Former Judge, Supreme Court of India to study the various deficiency of infrastructure in the adjudicatory fora constituted under the Consumer Protection Act, 1986. The Committee has observed that the fora constituted under the enactment do not function as effectively as expected due to a poor organizational set up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. Benches of the state and district fora sit, in many cases for barely two or three hours every day and remain non-functional for months due to a lack of Coram. Orders are not enforced like other orders passed by the civil courts. The state governments have failed to respond to the suggestions of the Committee for streamlining the state of affairs.

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<sup>471</sup> AIR 2016 SC 5368.

**Issue:** Whether the matter needed any direction by the Supreme Court?

**Decision:** The interim report of the Committee provided an unfortunate reflection of the state of affairs in the consumer fora at the district, state and national level. That these bodies which are vested with important functions of a judicial nature continue to work despite the prevalence of such adverse conditions and in the face of the apathy of the governments both at the national and state level is a matter which requires immediate intervention by this Court. In the absence of an uniform pattern, the result was a wide variation in standards and a great deal of subjectivity, and bureaucratic and political interference, which had been noticed in the reports submitted by the Committee to the Supreme Court. The extent of the administrative control shall be in all matters relating to the administrative functioning of the forum concerned including but not limited to assignment of judicial and administrative work; posting, transfer and control over members; selection, appointment and disciplinary matters relating to the staff of the district fora and State Commissions and in relation provisioning and meeting the infrastructural requirements of those bodies. The States of Tamil Nadu and Jammu & Kashmir were directed to appoint the President and Members of the State Commission at the earliest. Also, the State of Uttar Pradesh was directed to take appropriate disciplinary action against non-judicial member of District Forum for his unauthorized absence for over a year, forthwith. Various directions were issued by the Supreme Court which were (i) the Union Government shall for the purpose of ensuring uniformity in the exercise of the Rule making power Under Section 10(3) and Section 16(2) of the Consumer Protection Act, 1986 frame model Rules for adoption by the state governments; (ii) the Union Government shall also frame within four months model Rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District fora, State Commissions and National Commission; (iii) the Union Government shall while framing the model Rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions mentioned above; upon the approval

of the model Rules by the present Court, the State governments shall proceed to adopt the model Rules by framing appropriate Rules in the exercise of the Rule making powers under Section 30 of the Consumer Protection Act, 1986; (v) the National Consumer Disputes Redressal Commission is requested to formulate Regulations under Section 30A with the previous approval of the Central Government within a period of three months from the date of the order in order to effectuate the power of administrative control vested in the National Commission over the State Commissions under Section 24(B)(1) (iii) and in respect of the administrative control of the State Commission over the district fora in terms of Section 24(B)(2) to effectively implement the objects and purposes of the Consumer Protection Act, 1986.

Procedure of district consumer forum

**New India Assurance Co. Ltd. v. Hilli Mutipurpose Cold Storage Pvt. Ltd.<sup>472</sup>**

**Facts:** The three Judge Bench of the Apex court said District Consumer Forums can grant a further period of 15 days to the opposite party for filing his version and not beyond that holding that the law laid down in Dr. J.J. Merchant case (2002) prevails over latter view taken in Kailash case (2005). The bench comprising of Justices Anil R. Dave, Vikramajit Sen and Pinaki Chandra Ghose, rejected the contention that the provisions of Section 13(2) (a) of the Consumer Protection Act are merely directory and not mandatory in nature.

**Issue:** Whether the law relating to period of limitation in for filing the written statement or giving version of the opponent as per the provisions of Section 13(2) (a) of the Consumer Protection Act, 1986 are directory or mandatory in nature?

**Decision:** In this case Supreme court referred two cases namely - *Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi*, [(2002) 6 SCC 635] or *Kailash v. Nanbku & Ors.* [(2005) 4 SCC 480] Section 13(2) (a) of the Consumer Protection Act, 1986 reads “The District Forum shall,....., refer a copy of such complaint to the Opposite Party directing him to give his version of the case

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<sup>472</sup> 2015 SCC OnLine SC 1280.

within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum” Dr. J.J. Merchant Case (2002) In this case, a three judge bench of Apex Court had held “there is legislative mandate to the District Forum or the Commissions to dispose of the complaints as far as possible within prescribed time of three months by adhering strictly to the procedure prescribed under the Act. The Opposite Party has to submit its version within 30 days from the date of the receipt of the complaint by him and Commission can give at the most further 15 days for some unavoidable reasons to file its version.” Kailash case (2005) In this case, another three judges bench, held that limit of 90 days, as prescribed by the proviso to Rule 1 of Order 8 of the Civil Procedure Code, is not mandatory, but directory in nature, and further time for filing reply can be granted, if the circumstances are such that require grant of further time for filing the reply. In this case, Dr. J.J. Merchant case was also discussed and it was held that the observations made in that case, to the extent it deal with the Rule 1 of Order 8 of CPC was obiter. Dr. J.J. Merchant case holds the field the court said that since the issue discussed in Dr. J.J. Merchant case is identical to the issue in the present case, it holds the field and not the latter view in Kailash case, since it deals with CPC provisions. Further the Supreme court observed that Dr. J.J. Merchant case was decided in 2002, whereas Kailash case was decided in 2005 and as per law laid down by this Court, while deciding the case of Kailash, the Court (being it of the same strength) ought to have respected the view expressed in Dr. J.J. Merchant case as the judgment delivered in the case was earlier in point of time. The court said that this view is supported by the dictum laid down in Central Board of *Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.* [(2005) 2 SCC 673], by the Constitution bench of the Apex court, wherein it was held that a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. Not only this three-Judge Bench, but even a Bench of coordinate strength of this Court, which had decided the case of Kailash, was bound by the view taken by a three-Judge Bench in the case of Dr. J.J. Merchant, the bench said. Thus Supreme Court held that District Consumer Forums can grant a further period of 15 days to the Opposite Party for filing his version and not beyond that in which Dr. J.J. Merchant case prevails over Kailash case.

Representation by non-advocates before consumer courts

**C. Venkatachalam v. Ajitkumar C. Shah and Ors. and Bar Council of India v. Sanjay R. Kothari and Ors.**<sup>473</sup>

**Facts:** High Court in the impugned judgment held that a party before the District Consumer Forum/State Commission cannot be compelled to engage services of an Advocate. So against this judgment present appeal was filed. Question was raised that Whether non-advocates can represent their parties before Consumer Forum. Court held that section 32 of the Advocates Act, 1961 deals with the power of Court to permit appearances of any person not enrolled as an Advocate before Consumer Forum. Consumer Protection Act, 1986 is one of the benevolent social legislations intended to protect the large body of consumers from exploitation. Primary object of the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and for that a quasi-judicial machinery has been sought to be set up at the District, State and Central levels. Consumer Protection Act has come to meet the long-felt necessity of protecting common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory. In impugned judgment High Court aptly observed that many statutes, such as, Sales Tax, Income Tax and Competition Act also permit Non-Advocates to represent parties before the authorities and those Non-Advocates cannot be said to practice law. On the same analogy those Non-Advocates who appear before Consumer forum also cannot be said to practice law. Hence, Court approved the view taken in impugned judgment of High Court.

Summary proceedings of complex issues

**Bahar Agrochem & Feeds Pvt. Ltd. v. Prasad Gurusidappa Prachande.**<sup>474</sup>

**Facts:** The complaint was regarding crop damage on account of the use of a bio-fertilizer. The Opposite Party contended that the case contained complex issues of fact which could not be adjudicated in summary jurisdiction.

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473 (2011) 9 SCC 707.

474 II (2009) CPJ 137 (NC).

**Decision:** The National Commission dismissed the revision holding that there was no straightjacket formula to decide whether the consumer forum was competent to deal with a case, and each case was to be decided on its own facts. The issues involved in the present case could not be considered to be so complex as to not be able to be adjudicated in summary proceedings; if necessary, the consumer forum had the power to cross-examine witnesses as well as experts.

Supervisory jurisdiction of National Consumer Disputes Redressal Commission

**NCDRC Bar Association (Regd.) v. Davinder Malhotra and others.<sup>475</sup>**

**Decision:** In this case, the National Commission held that in addition to the appellate and revisional jurisdiction under Section 24-B of the Consumer Protection Act, National Consumer Disputes Redressal Commission is having supervisory jurisdiction over consumer fora in the country. Unless there is a contrary judgement by the Apex Court, the State Commission is bound to follow the decision rendered by the National Commission. Further, if there are conflicting decisions rendered by the National Commission, the State Commission may decide the matter appropriately accepting one or the other judgement. Further, the State Commission must remember that constitution of Bench before the National Commission is absolutely within the jurisdiction of the Precedent of the National Commission and the Benches are to be constituted on the basis of power conferred under Section 20 of the Act. The State Commission has no business to interfere and criticize whether the constitution of Bench is justified or not.

Transfer of motor vehicle policy

**M/s. United India Insurance Co. Ltd...New Delhi v. Goli Sridhar S/o Rajaiah Andhra Pradesh<sup>476</sup>**

**Facts:** Smt. Ratna Jain, who was the owner of the Indica car bearing No. AP.15P 6285, got the vehicle insured for the period from 3.3.2004 to 2.3.05.

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<sup>475</sup> 2008 SCC OnLine NCDRC 46.

<sup>476</sup> 2011 SCC OnLine NCDRC 535.

Respondent/ Complainant purchased the said car from her and got it transferred in his name on 8.3.04. Respondent along with his family members went to Vijayawada Krishna Pushkaram in the said car. The car was stolen while the family of the Respondent was taking holy bath in the Krishna River. Respondent lodged the claim with the Petitioner. Claim was not settled. Alleging deficiency in service on the part of the Petitioner in not settling the claim, Respondent filed the complaint before the District Forum. Petitioner contended that there was no privity of contract between the Complainant and the Petitioner. That the Respondent had not applied for transfer of the policy within 14 days of the transfer of the ownership in the prescribed form to the insurer for making necessary changes. That since the policy had not been transferred in the name of the Respondent, the Petitioner was not liable to reimburse to the loss incurred by the Respondent. District Forum and State commission gave the order against the Petitioner. But in appeal NCDRC. It was held that on an analysis of Sections 94 and 95 of Motor Vehicle Act, we further find that there are two third parties when a vehicle is transferred by the owner to a purchase. The purchase is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. Commission set aside the district Forum and State Commission order.

Unfair terms in contracts

**Sehgal School of Competition v. Dalbir Singh<sup>477</sup>**

**Facts:** Complainant sought refund from the Opposite Party's coaching school after only one year of the two-year course on the ground that the coaching was not up to the mark. The District Forum directed the refund of the fees and the Opposite Party's appeal was dismissed. In revision, the Petitioner contended that payment of lump sum fees for the two years was a condition of the contract that no part of the fees could either be refunded or transferred under any circumstances.

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<sup>477</sup> MANU/CF/0179 2009.

**Decision:** The Commission held that this condition was one sided and biased in favour of the Opposite Party, against natural justice and not a fair-trade practice.

#### VOLUNTARY CONSUMER ASSOCIATION

**Administrator Tara Bai Desai Charitable Ophthalmic Trust Hospital v. Supreme Elevators India Pvt. Ltd. and Ors.<sup>478</sup>**

**Facts:** Smt. Tara bai Desai Charitable Ophthalmic Trust Hospital filed a Consumer Complaint before the District Consumer Dispute Redressal Forum Jodhpur alleging the deficiency in respect of lift installed in the premises of the Trust Hospital against Supreme Elevators India Pvt. Ltd (Opposite Party). The District Forum allowed the complaint and ordered to pay total amount of Rs. 5,90,000/- along with interest @ 9% from the date of filling of complaint. The Opposite Party preferred the appeal against the order of District Forum before the State Commission. The State Commission vide its order has allowed the appeal and dismissed the complaint on the ground that the Complainant is a trust and a trust is not a ‘consumer’ within the definition of consumer given in the Consumer Protection Act, 1986. The view taken by the State Consumer was upheld by the National Consumer Dispute Redressal Commission, which order is presently challenged.

**Issue:** Whether a ‘trust’ is a ‘consumer’ under Consumer Protection Act so as to file complaints before the Consumer Forums?

**Decision:** The Supreme Court observed expressions “complainant”, “consumer”, and “person” in the Consumer Protection Act, opined that “trust” may also come within the purview of the definition of “person” under the Act. It noted that the definition of “person” in terms of Section 2(1)(m) of the Act is also an inclusive definition as it includes “every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not”. “Moreover, the legislative intent appears to have a wider coverage and therefore the concerned provision includes number

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<sup>478</sup> MANU/CF/0390/2019.

of categories under the definition of “person” so much so that even an unregistered firm which otherwise has certain disabilities in law, is also entitled to maintain an action.

**Sobha Hibiscus Condominium v. Managing Director, M/s. Sobha Developers Ltd. and Another<sup>479</sup>**

**Facts:** The Appellant/Complainant is a statutory body under provisions of the Karnataka Apartment Ownership Act, 1972 (for short, ‘1972 Act’). It consists of members, who are the owners of the apartments in a multi-storey building, namely, “Sobha Hibiscus” situated in Amballipur Village, Varthur Hobli, of South Bangalore Taluk in Karnataka. The Appellant-Condominium has come into existence pursuant to a declaration made by the Opposite Party under the provisions of 1972 Act. When the appellant has filed complaint claiming certain reliefs before the NCDRC, the same is resisted by the Opposite Party, by taking a preliminary objection that the Complainant is not a ‘consumer’ within the meaning of the Act, therefore, has no locus standi to file the complaint. The NCDRC, by referring to relevant provisions of the Act, has recorded a finding that the Complainant is not a ‘recognised consumer association’ within the meaning of Section 12(1)(b) of the Act.

**Issue:** Whether Appellant-Condominium is voluntary association within the meaning of sec- 12 of the Consumer Protection Act?

**Decision:** Supreme Court held that, In essence, a voluntary consumer association will be a body formed by a group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law. The appellant association which consists of members of flat owners in a building, which has come into existence pursuant to a declaration which is required to be made compulsorily under the provisions of the Karnataka Apartment Ownership Act, 1972, i.e. Section 3(j) of the 1972 Act, It is clear from the objects of the said Act, that it is an Act to provide ownership of an individual apartment in a building and to make such apartment heritable and transferable property. Hence, it

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<sup>479</sup> 2020 SCC OnLine SC 191.

cannot be said to be a voluntary association to maintain a complaint under the provisions of the Act.

**Subhechha Welfare Society v. Earth Infrastructure Pvt. Ltd.<sup>480</sup>**

**Facts:** The Appellant-Complainant is a registered Welfare Society. Consumer Complaint No. 1196 of 2016 has been filed by the Complainant on behalf of 8 allottees and Consumer Complaint No. 1197 of 2016 has been filed by the Complainant on behalf of 12 allottees with the allegations that buyers booked units with the Opposite Party on different dates and in spite of making major payment, possession has not been delivered to them. In the aforesaid complaint directions are sought against the Opposite Party to hand over possession of units in all respects or in the alternative to provide other flat of identical size or to refund the amount deposited along with interest and compensation.

It is the case of the Appellant that the Complainant being a society registered under Haryana Registration and Regulation Act has filed complaint on behalf of allottees, under Section 12(1)(b) of the Consumer Protection Act, 1986.

Both the complaints filed by the Appellant-complainant are dismissed on the ground that recognised consumer association can file complaint on behalf of single consumer only, but cannot file complaint on behalf of several consumers in one complaint. Review applications preferred against the dismissal of the complaints have also been dismissed after which civil appeals are filed by the complainant.

**Issue:** Whether there is any restriction on the voluntary registered association to file complaint on behalf of single consumer only?

**Decision:** Supreme Court held that the finding of the NCDRC that recognised consumer association can file complaint on behalf of a single consumer, but cannot file complaint on behalf of several consumers in one complaint, is erroneous and there is no legal basis for that. From a reading of Section 12(1)(b) of the Act read with Explanation to Section 12 it is clear that

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voluntary registered association can file a complaint on behalf of its members to espouse their grievances. There is nothing in the aforesaid provision of the Act which would restrict its application to the complaint pertaining to an individual Complainant. If a recognised consumer association is made to file multiple complaints in respect of several consumers having a similar cause of action, that would defeat the very purpose of registration of a society or association and it would result only in multiplicity of proceedings without serving any useful purpose.

## CONCLUSION

It is clear that there is a growing recognition and expansion of consumer rights along with changes in various sectors of our society. Across sectors, landmark judgements are given in the favour of consumers, which ensure that there is a greater obligation to provide high quality goods and services in all aspects of the activity.

Legislations like the Consumer Protection Act, 2019 are only a single step in the development of a robust, comprehensive and efficient framework for the purpose of identification and resolution of consumer disputes. The Act aimed to provide for the protection of the interest of the consumer through establishment of authorities for timely and effective administration. The new chapters included in new Act are, Chapter III on Central Consumer Protection Authority which seeks to establish a Central Consumer Protection Authority (CCPA) which will be tasked with promoting, protecting and enforcing Consumer Rights, having *suo moto* powers in case of misleading advertisements, unfair trade practices; The establishment of the CCPA has filled with the gap of investigation and inquiry, recall of goods and withdraw services that are hazardous which lacked under Consumer Protection Act, 1986 and can also bring the *suo moto* action for violation of consumer rights as a class. One more significant change that has brought is that a consumer body or a class of consumer on their own can collect information to sustain a complaint filed before the consumer commissions. Chapter V on Mediation where it mandates the Consumer Fora to establish mediation cell attached to it and refer the complaint to mediation cell if the concerned Consumer Fora deems fit that there exist elements of a possible settlement between the disputing parties in the complaint; and Chapter VI on Product Liability which explicitly provides for entertainment by the statutory fora of claims for compensation under a product liability action for any harm caused by a

defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller in the above said Act.

The New principles that adopted under the Consumer Protection Act, 2019 such as product liability, e-commerce, misleading advertisement etc. which are the need of the hour but the consumer commission has played a vital role in development of these concepts and also providing the vide interpretation of the various of Act has led to the inclusion of the various sectors within the ambit of the Consumer Protection Laws.

In the pursuance of the same, some of the recommendations are as follows:

1. Keeping in mind that consumers with grievances can only seek remedies using the Consumer Protection Act, 2019 in certain sectors which do not have specialised consumer-centric legislations/regulations/rules, it is necessary that every sector should develop legal infrastructure for consumer issues and provide a mechanism for grievance redressal.
2. The existing legal infrastructure for consumer protection in other sectors should be subject to intensive legal scrutiny for identification of any lacunae or loophole which hinders the administration of justice.
3. There should be efforts to increase awareness about consumer's rights and responsibilities, the remedies available to them and the procedure to be followed etc. Similarly, the duties and liabilities of sellers/service providers should be made clear and information should be given to all parties involved. Considering the linguistic and geographic diversity of India, these efforts should be decentralised and undertaken by both private and public institutions.
4. Legislations and policies introduced by the government should take into account the perspective of consumers.
5. There should be efforts to increase legal literature on consumer protection pertaining to different sectors in order to have greater clarity and understanding of the underlying principles of law and public policy

relied upon for consumer protection. This also requires development of curriculum for schools, colleges and other educational institutions.

6. Development of best-practices and qualitative standards for every sector should be encouraged and there should be regulatory authorities for ensuring strict adherence to these standards with the powers to investigate and penalise offenders.
7. The legislations and policies introduced by the government should keep pace with changes in different sectors and rise of new sectors which affect the rights of the consumers. Existing legislations should be suitably modified.

### Annexure-I Comparative Chart

#### **CONSUMER PROTECTION ACT, 1986 AND CONSUMER PROTECTION ACT, 2019**

Note:  Deletions are marked in Italics     Insertions are marked in Bold

Topic	Consumer Protection Act, 1986	Consumer Protection Act, 2019
Preamble	An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.	An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.
<b>CHAPTER -I PRELIMINARY</b>		
Short title, extent, commencement and application		<p>1. Short title, extent, commencement and application</p> <p>(1) This Act may be called the Consumer Protection Act, 1986.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.</p> <p>(4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.</p>

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<p><b>“advertisement”</b> Not defined</p>	<p>2(1) “advertisement” means any audio or visual publicity, representation, endorsement or pronouncement made by means of flight, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;</p>
<p><b>“appropriate laboratory”</b></p>	<p>2(1)(a) “appropriate laboratory” means a laboratory or organisation-</p> <ul style="list-style-type: none"> <li>(i) recognised by the Central Government;</li> <li>(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or</li> <li>(iii) <i>any such laboratory or organization (DELETED)</i> established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;</li> </ul>
<p><b>“branch office”</b></p>	<p>2(1) (aa) “branch office” means - (i) any establishment described as a branch by the opposite party; or (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;]</p>
<p><b>Central Authority”</b></p>	<p>No Provision</p>
<p><b>“complainant”</b></p>	<p>2(1) (b) “complainant” means-</p> <ul style="list-style-type: none"> <li>(i) a consumer; or</li> </ul> <p>2(5) “complainant” means - (i) a consumer; or</p> <ul style="list-style-type: none"> <li>(ii) any voluntary consumer association registered under any law for the time being in force; or</li> </ul>

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<p>(ii) any voluntary consumer association registered under the <i>Companies Act, 1956 (1 of 1956)</i> or (DELETED) under any other law for the time being in force; or</p> <p>(iii) the Central Government or any State Government; or</p> <p>(iv) one or more consumers, where there are numerous consumers having the same interest; or</p> <p>(v) in case of death of a consumer, his legal heir or legal representative; or</p> <p>(vi) in case of a consumer being a minor, his parent or legal guardian;</p>	<p>(iii) the Central Government or any State Government; or</p> <p>(iv) the Central Authority; or</p> <p>(v) one or more consumers, where there are numerous consumers having the same interest; or</p> <p>(vi) in case of death of a consumer, his legal heir or legal representative; or</p> <p>(vii) in case of a consumer being a minor, his parent or legal guardian;</p>
<p><b>“complaint”</b></p>	<p>2(1)(c) “complaint” means any allegation in writing made by a complainant that-</p> <ul style="list-style-type: none"> <li>(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;</li> <li>(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;</li> <li>(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency <i>in any respect; (Deleted)</i></li> <li>(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-</li> </ul> <p>(a) Fixed by or under any law for the time being in force;</p> <p>(b) displayed on the goods or any package containing such goods;</p> <p>(c) displayed on the price list exhibited by him by or under any law for the time being in force;</p> <p>(d) agreed between the parties;</p> <p>(v) goods which will be hazardous to life and safety when used, are being-offered for sale to the public-</p>

<p>(a) in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force;</p> <p>(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;</p> <p>(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety, <i>with a view to obtaining any relief provided by or under this Act;</i></p>	<p>(v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public-</p> <p>(a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being inforce;</p> <p>(b) where the trader knows that the goods so offered are unsafe to the public;</p> <p>(vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;</p> <p><b>2(7) “consumer”</b> means any person who-</p> <p>(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 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</p> <p>(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the</p>
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<p>approval of the first mentioned person; but does not include a person who avails of such services of any commercial purpose;</p> <p>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;</p> <p><b>(b) the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;</b></p>	<p>when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.</p> <p>Explanation-For the purposes of this clause,-</p> <p>(a) the expression “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;</p> <p><b>(b) the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;</b></p>	<p>2(1)(e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.</p> <p><b>consumer rights</b></p> <p><i>Defined under Sec. 6</i></p> <p><i>Deleted the term education</i></p>	<p>2(8) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;</p> <p>2(9) “consumer rights” includes,-</p> <ul style="list-style-type: none"> <li>(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;</li> <li>(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;</li> <li>(iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;</li> <li>(iv) the right to be heard and to be assured that consumer’s interests will receive due consideration at appropriate fora;</li> </ul>
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		(v) the right to seek redress against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and (vi) the right to consumer awareness; (deleted the term education)
	2(1)(f) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;	2(10) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression “defective” shall be construed accordingly;
	2(1)(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.	2(11) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer;
design	Not defined	2(12) “design”, in relation to a product, means the intended or known physical and material characteristics of such product and includes any intended or

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		known formulation or content of such product and the usual result of the intended manufacturing or other process used to produce such product;
Direct selling	Not defined	2(13) “direct selling” means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location;
Director-General	Not defined	2(14) “Director-General” means the Director-General appointed under sub-section (2) of section 15;
District Commission	2(1) “District Forum” means a Consumer Disputes Redressal Forum established under clause (a) of section 9;	2(15) “District Commission” means a District Consumer Disputes Redressal Commission established under sub-section (1) of section 28
E-commerce	Not defined	2(16) “e-commerce” means buying or selling of goods or services including digital products over digital or electronic network;
Electronic service provider	Not defined	2(17) “electronic service provider” means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites;
	Not defined	2(18) “endorsement”, in relation to an advertisement, means— (i) any message, verbal statement, demonstration; or (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or (iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;

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Not defined	2(19) “establishment” includes an advertising agency, commission agent, manufacturing, trading or any other commercial agency which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any commercial activity, trade or profession, or such other class or classes of persons including public utility entities in the manner as may be prescribed;
Not defined	2(20) “express warranty” means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model;
Not defined	2(21) “goods” means every kind of movable property and includes “food” as defined in clause (j) of subsection (1) of section 3 of the Food Safety and Standards Act, 2006;
Not defined	2(22) “harm”, in relation to a product liability, includes- <ul style="list-style-type: none"> <li>(i) damage to any property, other than the product itself;</li> <li>(ii) personal injury, illness or death;</li> <li>(iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or</li> <li>(iv) any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii), but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or</li> </ul>

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		any commercial or economic loss, including any direct, incidental or consequential loss relating thereto;
	Not defined	
	<b>2(1)(i) “manufacturer”</b> means a person who-	
	(i) makes or manufactures any goods or parts thereof; or	
	(iii) <i>does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or</i>	
	(iv) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer; ;	
	Not defined	
	<b>2(25) “mediation”</b> means the process by which a mediator mediates the consumer disputes;	
	Not defined	
	<b>2(26) “mediator”</b> means a mediator referred to in section 75;	
		<b>2(27) “member”</b> includes the President and a member of the National Commission or a State Commission or a District Commission, as the case may be;
	Not defined	
	<b>2(28) “misleading advertisement”</b> in relation to any product or service, means an advertisement, which-	
	(i) falsely describes such product or service; or	
	(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or	
	(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or	
	(iv) deliberately conceals important information;	

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National Commission	2(1)(k) “National Commission” means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;	2(29) “National Commission” means the National Consumer Disputes Redressal Commission established under sub-section (1) of section 53;
Notification	<b>2(1)(l) “notification”</b> means a notification published in the Official Gazette; and the term “notify” shall be construed accordingly;	2(30) “notification” means a notification published in the Official Gazette and the term “notify” shall be construed accordingly;
Person	2(1) (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 (21 of 1860) or not;	2(31) “person” includes- <ul style="list-style-type: none"> <li>(i) an individual;</li> <li>(ii) a firm whether registered or not;</li> <li>(iii) a Hindu undivided family;</li> <li>(iv) a co-operative society;</li> <li>(v) an association of persons whether registered under the Societies Registration Act, 1860 or not;</li> <li>(vi) any corporation, company or a body of individuals whether incorporated or not;</li> <li>(vii) any artificial juridical person, not falling within any of the preceding sub-clauses;</li> </ul>
Prescribed	2(1)(n) “prescribed” means prescribed by rules made by the State Government, or as the case maybe, by the Central Government under this Act;	2(32) “prescribed” means prescribed by rules made by the Central Government, or as the case may be, the State Government;
Product	Not defined	2(33) “product” means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

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Product liability	Not defined	2(34) “product liability” means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;
Product liability action	Not defined	2(35) “product liability action” means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him;
Product manufacturer	Not defined	2 (36) “product manufacturer” means a person who- <ul style="list-style-type: none"> <li>(i) makes any product or parts thereof; or</li> <li>(ii) assembles parts thereof made by others; or</li> <li>(iii) puts or causes to be put his own mark on any products made by any other person; or</li> <li>(iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or</li> <li>(v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or</li> <li>(vi) being a product seller of a product, is also a manufacturer of such product;</li> </ul>
Product seller	Not defined	2(37) “product seller”, in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in

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	<p>placing such product for commercial purpose and includes-</p> <ul style="list-style-type: none"> <li>(i) a manufacturer who is also a product seller;</li> <li>(ii) a service provider, but does not include-           <ul style="list-style-type: none"> <li>(a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;</li> <li>(b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;</li> <li>(c) a person who-           <ul style="list-style-type: none"> <li>(I) acts only in a financial capacity with respect to the sale of the product;</li> <li>(II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;</li> <li>(III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;</li> </ul> </li> </ul> </li> </ul>	<p>2(38) “product service provider”, in relation to a product, means a person who provides any service in respect of such product;</p>	<p>2(39) “regulations” means the regulations made by the National Commission, or as the case may be, the Central Authority;</p>
Product service provider	Not defined		

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Regulator	Not defined	2(40) “Regulator” means a body or any authority established under any other law for the time being in force;
Restrictive trade practice	2(1)(nn) “restrictive trade practice” means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include; (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;	2(41) “restrictive trade practice” means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include - (i) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; (ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;
Service	2(1)(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 any service free of charge or under a contract of personal service;	2(42) “service” means service of any description which is made available to potential users and includes, <b>but not limited to</b> , the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, <b>telecom</b> , boarding 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;
Spurious goods	2(1)(oo) “spurious goods & <i>services</i> ” mean such goods and services which are claimed to be genuine <i>but they are actually not so</i> ;	2(43) “spurious goods” means such goods which are falsely claimed to be genuine;

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State Commission	2(1)(p) “State Commission” means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;	2(44) “State Commission” means a State Consumer Disputes Redressal Commission established under subsection (1) of section 42;
Trader	2(1) (q) “trader” in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;	2(45) “trader”, in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;
Unfair contract	Not defined	2(46) “unfair contract” means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely- <ul style="list-style-type: none"> <li>(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or</li> <li>(ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or</li> <li>(iii) refusing to accept early repayment of debts on payment of applicable penalty; or</li> <li>(iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or</li> <li>(v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or</li> <li>(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;</li> </ul>

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<p>(21) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-</p> <p>(1) <i>the practice of making any statement, whether orally or in writing or by visible representation which,-</i></p> <ul style="list-style-type: none"> <li>(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;</li> <li>(ii) falsely represents that the services are of a particular standard, quality or grade;</li> <li>(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;</li> <li>(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;</li> <li>(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;</li> <li>(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;</li> <li>(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:</li> </ul> <p>Provided that where a defence is raised to the effect that such warranty or guarantee is based on an adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;</p>	<p>2(7) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- (i) making any statement, whether orally or in writing or by visible representation <b>including by means of electronic record</b>, which-</p> <ul style="list-style-type: none"> <li>(a) falsely represents that the goods are of a particular standard, quality, grade, composition, style or model;</li> <li>(b) falsely represents that the services are of a particular standard, quality or grade;</li> <li>(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;</li> <li>(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;</li> <li>(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;</li> <li>(f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;</li> <li>(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:</li> </ul> <p>Provided that where a defence is raised to the effect that such warranty or guarantee is based on an adequate or proper test thereof: Provided that where a defence is raised to the effect that such warranty or guarantee is based on an adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;</p>
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<p>(viii) makes to the public a representation in a form that purports to be-</p> <ul style="list-style-type: none"> <li>(i) a warranty or guarantee of a product or of any goods or services; or</li> <li>(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;</li> <li>(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or ‘are, ordinarily sold or provided, and, for this purpose, are presentation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;</li> <li>(x) gives false or misleading facts disparaging the goods, services or trade of another person.</li> </ul> <p>Explanation -For the purposes of clause (1), a statement that is-</p> <ul style="list-style-type: none"> <li>(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or</li> <li>(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale;</li> </ul>	<p>of such defence shall lie on the person raising such defence;</p> <p>(h) makes to the public a representation in a form that purports to be-</p> <ul style="list-style-type: none"> <li>(A) a warranty or guarantee of a product or of any goods or services; or</li> <li>(B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;</li> </ul> <p>(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;</p> <p>(j) gives false or misleading facts disparaging the goods, services or trade of another person.</p> <p>Explanation-For the purposes of this sub-clause, a statement that is,-</p> <ul style="list-style-type: none"> <li>(A) expressed on an article offered or displayed for sale, or on its wrapper or container; or</li> </ul>
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<p>or</p> <p>(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;</p> <p>(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.</p> <p>Explanation- For the purpose of clause (2), “bargaining price” means-</p> <p>(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or</p> <p>(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;</p> <p>(3) permits-</p> <p>(a) the offering of gifts, prizes or other items with the intention of not providing themas offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;</p>	<p>(B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or</p> <p>(C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;</p> <p>(i) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.</p> <p>Explanation- For the purpose of this sub-clause, “bargain price” means-</p> <p>(A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or</p> <p>(B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;</p>
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<p>(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;</p> <p>(3A) withholding from the participants of any scheme offering gifts, prices or other items free of charge on its closure the information about final results of the scheme.</p> <p>Explanation: for the purpose of this sub clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;</p> <p>(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;</p> <p>(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.</p> <p>(6) Manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;</p>	<p>(iii) permitting-</p> <ul style="list-style-type: none"> <li>(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;</li> <li>(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;</li> <li>(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.</li> </ul> <p>Explanation- For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;</p> <p>(iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;</p> <p>(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.</p> <p>(6) Manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;</p>
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	<p>(v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;</p> <p>(vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;</p> <p>(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;</p> <p>(viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;</p> <p>(ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.</p> <p>100. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force; in derogation of the provisions of any other law for the time being in force.</p>
Act not in derogation of any other law	

<b>CHAPTER II</b>	
<b>CONSUMER PROTECTION COUNCILS</b>	
Establishment of Central Consumer Protection Authority.	<p>No Provision</p> <p>10. Establishment of Central Consumer Protection Authority.</p> <p>(1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.</p> <p>(2) The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.</p> <p>(3) The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.</p>
Qualifications, method of recruitment, etc., of Chief Commissioner and Commissioners	<p>No Provision</p> <p>11. Qualifications, method of recruitment, etc., of Chief Commissioner and Commissioners.</p> <p>The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.</p>

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<p>Vacancy, etc., not to invalidate proceedings of Central Authority</p>	<p>12. Vacancy, etc., not to invalidate proceedings of Central Authority.</p> <p>No act or proceeding of the Central Authority shall be invalid merely by reason of—</p> <ul style="list-style-type: none"> <li>(a) any vacancy in, or any defect in the constitution of, the Central Authority; or</li> <li>(b) any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or</li> <li>(c) any irregularity in the procedure of the Central Authority not affecting the merits of the case.</li> </ul>
<p>Appointment of officers, experts, professionals and other employees of Central Authority</p>	<p>13. Appointment of officers, experts, professionals and other employees of Central Authority</p> <p>(1) The Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this Act.</p> <p>(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority appointed under this Act shall be such as may be prescribed.</p> <p>(3) The Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and ability, who have special knowledge and experience in the areas of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration, as it deems necessary to assist it in the discharge of its functions under this Act.</p>

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Procedure of Central Authority	No Provision	<p>14. Procedure of Central Authority</p> <p>(1) The Central Authority shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioner and Commissioners as maybe specified by regulations.</p> <p>(2) The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority: Provided that the Chief Commissioner may delegate such of his powers relating to administrative matters of the Central Authority, as he may think fit, to any Commissioner (including Commissioner of a regional office) or any other officer of the Central Authority.</p>
Investigation Wing	No Provision	<p>15. Investigation Wing</p> <p>(1) The Central Authority shall have an Investigation Wing headed by a Director-General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority.</p> <p>(2) The Central Government may appoint a Director-General and such number of Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director, from amongst persons who have experience in investigation and possess such qualifications, in such manner, as may be prescribed.</p> <p>(3) Every Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director-General.</p>

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	<p>(4) The Director- General may delegate all or any of his powers to the Additional Director-General or Director, Joint Director or Deputy Director or Assistant Director, as the case may be, while conducting inquiries or investigations under this Act.</p> <p>(5) The inquiries or the investigations made by the Director-General shall be submitted to the Central Authority in such form, in such manner and within such time, as may be specified by regulations.</p>	
Power of District Collector	<p>16. Power of District Collector</p> <p>The District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.</p>	
Complaints to authorities	<p>17. Complaints to authorities</p> <p>A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.</p>	

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Powers and functions of Central Authority	No Provision	<p>18. Powers and functions of Central Authority</p> <p>(1) The Central Authority shall-</p> <ul style="list-style-type: none"><li>(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;</li><li>(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;</li><li>(c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made the reunder;</li><li>(d) ensure that no person takes part in the publication of any advertisement which is false or misleading.</li></ul> <p>(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid,-</p> <ul style="list-style-type: none"><li>(a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;</li><li>(b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;</li><li>(c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;</li></ul>
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	<p>(d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;</p> <p>(e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;</p> <p>(f) undertake and promote research in the field of consumer rights;</p> <p>(g) spread and promote awareness on consumer rights;</p> <p>(h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;</p> <p>(i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;</p> <p>(j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;</p> <p>(k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;</p> <p>(l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.</p>
Power of Central Authority to refer matter for investigation or to other Regulator.	<p>19. Power of Central Authority to refer matter for investigation or to other Regulator.</p> <p>(1) The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a <i>prima facie</i> case of violation of consumer rights or any unfair trade practice.</p>

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	<p>or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a <i>prima facie</i> case, it shall cause investigation to be made by the Director-General or by the District Collector.</p> <p>(2) Where, after preliminary inquiry, the Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force; it may refer such matter to the concerned Regulator along with its report.</p> <p>(3) For the purposes of investigation under sub-section (1), the Central Authority, the Director General or the District Collector may call upon a person referred to in sub-section (1) and also direct him to produce any document or record in his possession.</p>
Power of Central Authority to recall goods, etc.	20. Power of Central Authority to recall goods, etc.

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Power of Central Authority to issue directions and penalties against false or misleading advertisements	No Provision <p>21. Power of Central Authority to issue directions and penalties against false or misleading advertisements.</p> <p>(1) Where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.</p> <p>(2) Notwithstanding the order passed under sub-section (1), if the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees:</p> <p>Provided that the Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.</p> <p>(3) Notwithstanding any order under sub-sections (1) and (2), where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year:</p> <p>Provided that the Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.</p>
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<p>(4) Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.</p> <p>(5) No endorser shall be liable to a penalty under sub-sections (2) and (3) if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.</p> <p>(6) No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business:</p> <p>Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.</p> <p>(7) While determining the penalty under this section, regard shall be had to the following, namely:-</p> <ul style="list-style-type: none"><li>(a) the population and the area impacted or affected by such offence;</li><li>(b) the frequency and duration of such offence;</li><li>(c) the vulnerability of the class of persons likely to be adversely affected by such offence; and</li><li>(d) the gross revenue from the sales effected by virtue of such offence.</li></ul> <p>(8) The Central Authority shall give the person an opportunity of being heard before an order under this section is passed.</p>	
Search and seizure	No Provision

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<p>Director-General or any other officer authorised by him in this behalf, or the District Collector or, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall-</p> <p>(a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;</p> <p>(b) make a note or an inventory of such record or article; or</p> <p>(c) require any person to produce any record, register or other document or article.</p> <p>(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, for search and seizure under this Act.</p> <p>(3) Every document, record or article seized under clause (a) of sub-section (1) or produced under clause (c) of that sub-section shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.</p> <p>(4) Where any article seized under sub-section (1) are subject to speedy or natural decay, the Director-General or such other officer may dispose of the article in such manner as may be prescribed.</p> <p>(5) In the case of articles other than the articles referred to in sub-section</p>
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		(4) provisions contained in clause (c) of sub-section (2) of section 38 shall mutatis mutandis apply in relation to analysis or tests.
Designation of any statutory authority or body to function as Central Authority	No Provision	23. Designation of any statutory authority or body to function as Central Authority. The Central Government may, if it considers necessary, by notification, designate any statutory authority or body to exercise the powers and perform the functions of the Central Authority referred to in section 10.
Appeal	No Provision	24. Appeal A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.
Grants by Central Government	No Provision	25. Grants by Central Government The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.
Accounts and audit	No Provision	26. Accounts and audit (1) The Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India. (2) The accounts of the Central Authority shall be audited by the Comptroller and Auditor-General of India at such intervals

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<p>as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Authority to the Comptroller and Auditor-General of India.</p> <p>(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the Central Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Authority.</p> <p>(4) The accounts of the Central Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government which shall cause the same to be laid before each House of Parliament.</p>	<p>27. Furnishing of annual reports, etc.</p> <p>(1) The Central Authority shall prepare once in every year, in such form, manner and at such time as may be prescribed, an annual report giving full account of its activities during the previous year and such other reports and returns, as may be directed, and copies of such report and returns shall be forwarded to the Central Government.</p> <p>(2) A copy of the annual report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.</p>
<p>Furnishing of annual reports, etc.</p>	

<b>CHAPTER IV</b>	
<b>CONSUMER DISPUTES REDRESSAL COMMISSION</b>	
	<b>District Commission</b>
Establishment of District Consumer Disputes Redressal Commission	<p>9. Establishment of Consumer Disputes Redressal Agencies- There shall be established for the purposes of this Act, the following agencies, namely:-</p> <ul style="list-style-type: none"> <li>(a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification: Provided that the State Government may, if it deems fit, establish more than one District Forum in a district;</li> </ul> <p>28. Establishment of District Consumer Disputes Redressal Commission (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State: Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.</p>
10. Composition of the District Forum.-4 [1] Each District Forum shall consist of,-	<p>(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;</p> <p>(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely :-</p> <ul style="list-style-type: none"> <li>(i) be not less than thirty-five years of age,</li> <li>(ii) possess a bachelor’s degree from a recognized university,</li> <li>(iii) be persons of ability, integrity and standing and have adequate problems relating to economics, law, commerce, accountancy, industry public affairs or administration:</li> </ul> <p>Provided that a person shall be disqualified for appointment as a member, if he-</p> <p>(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or</p> <p>(2) Each District Commission shall consist of-(a) a President, and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government</p> <p>29. Qualifications: The Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.</p> <p>30. Salaries: The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President, and members of the District Commission.</p> <p>31. Transitional provision: Any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold</p>

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<p>(b) is an undischarged insolvent; or</p> <p>(c) is of unsound mind and stands so declared by a competent court; or</p> <p>(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or</p> <p>(e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or</p> <p>(f) has such other disqualifications as may be prescribed by the State Government;</p>	<p>(IA) Every appointment under sub-section</p> <p>(I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely : -</p> <p>(i) the President of the State Commission - Chairman.</p> <p>(ii) Secretary, Law Department of the State - Member.</p> <p>Secretary, in charge of the Department dealing with consumer affairs in the State- Member.</p> <p>Provided that where the President of the state Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman</p> <p>(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or up to the</p> <p>office as such as President or, as the case may be, as member till the completion of his term for which he has been appointed.</p>
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<p>age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee. Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required as to be appointed under the provision of sub-section (1A) in place of the person who has resigned:</p> <p>Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.</p> <p>(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.</p> <p>Provided that the appointment of a member on whole-time basis shall be made by the state Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.</p>
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<p><b>Vacancy in office</b></p> <p>32. Vacancy in office: If, at any time, there is a vacancy in the office of the President or member of a District Commission, the State Government may, by notification, direct— (a) any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also; or (b) the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also.</p>	<p>33. Officers and other employees of DC: (1) The State Government shall provide the District Commission with such officers and other employees as may be required to assist the District Commission in the discharge of its functions. (2) The officers and other employees of the District Commission shall discharge their functions under the general superintendence of the President of the District Commission. (3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be such as may be prescribed.</p>	<p>34. Jurisdiction of the District Forum: (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees; <b>Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.</b></p>
<p><b>Officers and other employees of DC</b></p>		
<p><b>Jurisdiction of the District Forum</b></p>	<p>11. Jurisdiction of the District Forum.—</p> <p>(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.</p> <p>(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—</p>	

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<p>(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or</p> <p>(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or</p> <p>(c) the cause of action, wholly or in part, arises</p>	<p>(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,-</p> <ul style="list-style-type: none"> <li>(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or</li> <li>(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or</li> <li>(c) the cause of action, wholly or in part, arises; or</li> <li>(d) the complainant resides or personally works for gain.</li> </ul> <p>(3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.</p>
<p>Manner in which complaint shall be made:-</p> <p>(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by-</p> <ul style="list-style-type: none"> <li>(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;</li> <li>(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or</li> </ul>	<p>35. Manner in which complaint shall be made:</p> <p>(1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—</p> <ul style="list-style-type: none"> <li>(a) the consumer,— <ul style="list-style-type: none"> <li>(i) to whom such goods are sold or delivered or agreed to be sold or</li> </ul> </li> <li>(b) delivered or such service is provided or agreed to be provided; or</li> </ul>

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<p>agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;</p> <p>(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or</p> <p>(d) the Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.</p> <p>(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.</p> <p>(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:</p>	<p>(ii) who alleges unfair trade practice in respect of such goods or service;</p> <p>(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;</p> <p>(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or</p> <p>(d) the Central Government, the Central Authority or the State Government, as the case may be:</p>
<p>Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant:</p> <p>Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.</p> <p>(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:</p>	<p>Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.</p> <p>Explanation-For the purposes of this sub-section, “recognised consumer association” means any voluntary consumer association registered under any law for the time being in force.</p> <p>(2) Every complaint filed under sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.</p>

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<p>other court or tribunal or any authority set up by or under any other law for the time being in force.</p> <p><i>Explanation</i>-For the purpose of this section, “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.</p>	<p>36. Proceedings before DC:</p> <p>(1) Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together:</p> <p>Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.</p> <p>(2) On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same:</p> <p>Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant.</p> <p>Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.</p> <p>(3) Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.</p>
<p>Reference to mediation</p> <p>No Provision</p>	<p>37. Reference to mediation:</p> <p>(1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.</p>

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		(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.
	13. Procedure on receipt of complaint:- (1) The District Forum shall, on admission of a complaint, if it relates to any goods, (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum; (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g); (c) where the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from	38. procedure on admission of complaint: (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint. (2) Where the complaint relates to any goods, the District Commission shall,- (a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it; (b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g); (c) if the complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the

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	<p>any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;</p> <p>(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;</p> <p>(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;</p> <p>(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;</p> <p>(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party to the complainant as well as the opposite</p> <p>appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;</p> <p>(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;</p> <p>(e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;</p> <p>(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;</p> <p>(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate</p>
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<p>party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.</p> <p>(2) the District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-</p> <p>(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;</p> <p>(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,-</p> <p>(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or</p> <p>(ii) ex-parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.</p>	<p>laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.</p> <p>(3) The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,—</p> <p>(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;</p> <p>(b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute—</p> <p>(i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or</p> <p>(ii) ex-parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;</p>
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<p>(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.)</p> <p>(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.</p>	<p>(c) decide the complaint on merits if the complainant fails to appear on the date of hearing.</p> <p>(4) <b>For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.</b></p> <p>(5) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.</p> <p>(6) <b>Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record:</b> Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.</p> <p>(7) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.</p> <p>Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause</p>
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<p>is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:</p> <p>Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.</p> <p>Provided also that in the event of a complaint being disposed of after the period so specified this District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.</p> <p>(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.</p> <p>(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—</p> <p>(a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;</p> <p>(b) requiring the discovery and production of any document or other material object as evidence;</p> <p>(c) receiving of evidence on affidavits;</p> <p>(d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;</p> <p>(e) issuing of commissions for the examination of any witness, or document; and</p> <p>(f) any other matter which may be prescribed by the Central Government.</p>	<p>of adjournment have been recorded in writing by the Commission:</p> <p>Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations: Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.</p> <p>(8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.</p> <p>(9) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—</p> <p>(a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;</p> <p>(b) requiring the discovery and production of any document or other material object as evidence;</p> <p>(c) receiving of evidence on affidavits;</p> <p>(d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;</p> <p>(e) issuing of commissions for the examination of any witness, or document; and</p> <p>(f) any other matter which may be prescribed by the Central Government.</p>
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<p>(v) issuing of any commission for the examination of any witness, and  (vi) any other matter which may be prescribed.</p> <p>(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.</p> <p>(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (5) of section 2, the provisions of section "195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).</p> <p>(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as a reference to a complainant or the opposite party, as case may be.</p>	<p>(10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.</p> <p>(11) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.</p> <p>(12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as a reference to a complainant or the opposite party, as the case may be.</p>
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Findings of the District Forum 14. Finding of the District Forum.- (I) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely:- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question; (b) to replace the goods with new goods of similar description which shall be free from any defect; (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant; (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party; Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit: (e) to remove the defects in goods or deficiencies in the services in question; (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them; (g) not to offer the hazardous goods for sale; (h) to withdraw the hazardous goods from being offered for sale; (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;	39.Findings of the DC: (1) Where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely:— (a) to remove the defect pointed out by the appropriate laboratory from the goods in question; (b) to replace the goods with new goods of similar description which shall be free from any defect; (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided; (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit, <b>(e) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;</b> (f) to remove the defects in goods or deficiencies in the services in question; (g) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
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<p>(hb) to pay such sum as may be determined by it, if its of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently: Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:</p> <p>Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;</p> <p>(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;</p> <p>(i) to provide for adequate costs to parties.</p> <p>(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:</p> <p>Provided that where a member, for any reason, is unable to conduct a proceeding, till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.)</p> <p>(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:</p> <p>Provided that where the proceeding is conducted by the President and one member and they differ on any point</p>	<p>(h) not to offer the hazardous or unsafe goods for sale;</p> <p>(i) to withdraw the hazardous goods from being offered for sale;</p> <p>(j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;</p> <p>(k) to pay such sum as may be determined by it, if its of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:</p> <p>Provided that the minimum amount of sum so payable shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers;</p> <p>(l) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;</p> <p>(m) to provide for adequate costs to parties; and</p> <p><b>(n) to cease and desist from issuing any misleading advertisement.</b></p> <p><b>(2) Any amount obtained under sub-section (1) shall be credited to such fund and utilised in such manner as may be prescribed.</b></p> <p>(3) In any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission:</p>
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<p>or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.</p> <p>(3) <i>Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.</i></p>	<p>Provided that the other member shall give his opinion on such point or points referred to him within a period of one month from the date of such reference.</p> <p>(4) Every order made by the District Commission under sub-section (1) shall be signed by the President and the member who conducted the proceeding:</p> <p>Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member.</p>
Review by DC	No Provision

<p>40. Review by DC.</p> <p>The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.</p>	<p>41. Appeal: Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of <b>forty-five days</b> from the date of the order, in such form and manner, as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of <b>forty-five days</b>, if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty percent of that amount in the manner as may be prescribed:</p>
Review by DC	No Provision

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		Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.
<b>State Consumer Disputes Redressal Commission</b>		
Establishment of State Commission	9 (b) Establishment of State Consumer Disputes Redressal Agencies There shall be established for the purposes of this Act, a Consumer Disputes Redressal Commission to be known as the “State Commission” established by the State Government in the State by notification; and	42. Establishment of State Consumer Disputes Redressal Commission. (1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State. (2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette. Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.
Composition of the State Commission	16. Composition of the State Commission.- (1) Each State Commission shall consist of- (a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President. Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;] (b) not less than two, and not more than such number of members, as may be prescribed, and one of who	42. Establishment of State Consumer Disputes Redressal Commission (3) Each State Commission shall consist of- (a) a President; and (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government. <b>43. Qualification, etc., of President and Members of State Commission</b> The Central Government may, by notification, make rules to provide for the qualification for appointment, method of

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<p>shall be a woman, who shall have the following qualifications, namely:-</p> <ul style="list-style-type: none"><li>(i) be not less than thirty-five years of age;</li><li>(ii) possess a bachelor's degree from a recognized university; and</li><li>(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:</li></ul> <p>Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.</p> <p>Explanation: For the purposes of this clause, the expression “persons having a judicial background” shall mean persons having knowledge and experience for atleast a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:</p> <p>Provided further that a person shall be disqualified for appointment as a member, if he —</p> <ul style="list-style-type: none"><li>(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or</li><li>(b) is an undischarged insolvent; or</li><li>(c) is of unsound mind and stands so declared by a competent court; or</li><li>(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or</li></ul>
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- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or  
(f) has such other disqualifications as may be prescribed by the State Government.
- (1A) Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:-
- (i) President of the State Commission -Chairman.
  - (ii) Secretary of the Law Department of the State - Member.
  - (iii) Secretary, incharge of Department dealing with consumer affairs in the State -Member.
- Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.
- (1B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.  
(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.  
(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President

who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.)	<p>(2) The <i>salary or honorarium and other allowances payable to, and the other terms and conditions of service 21* * *</i>] of the members of the State Commission shall be such as may be prescribed by the State Government.</p> <p>(Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.)</p> <p>(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:</p> <p>Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in Clause (b) of Sub-Section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:</p> <p>Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in Clause (a) of</p>
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<p>Sub-section(1) of this section:</p> <p>Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in Sub section (1) in relation to the category of the member who is required to be appointed under the provisions of Sub-section (1A) in place of the person who has resigned.</p> <p>(4) Notwithstanding anything contained in sub-section (3), a person appointed as President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.</p>	<p>45. Transitional Provision</p> <p>Any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term.</p>	<p>46. Officers and Employees of State Commission</p> <p>(1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.</p> <p>(2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President.</p> <p>(3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed.</p>
<p>Officers and Employees of State Commission</p>		

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<p><b>Jurisdiction of State Commission</b></p> <p>17. Jurisdiction of the State Commission - Subject to the other provisions of this Act, the State Commission shall have jurisdiction—</p> <p>(a) to entertain—</p> <ul style="list-style-type: none"> <li>i. complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 1 [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and</li> <li>ii. appeals against the orders of any District Forum within the State; and</li> </ul> <p>(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.</p>	<p>47. Jurisdiction of State Commission</p> <p>(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—</p> <p>(a) to entertain—</p> <ul style="list-style-type: none"> <li>i. complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore;</li> </ul> <p>Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;</p> <ul style="list-style-type: none"> <li>ii. complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;</li> <li>iii. appeals against the orders of any District Commission within the State; and</li> </ul> <p>(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.</p> <p>(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit. Provided that the senior-most member shall preside over the Bench.</p> <p>(3) Where the members of a Bench differ in opinion on any</p>
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<p>point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.</p> <p>Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.</p> <p>(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction—</p> <ul style="list-style-type: none"> <li>(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or</li> <li>(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given (<i>or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or</i>)</li> </ul> <p>(DELETED)</p> <ul style="list-style-type: none"> <li>(c) the cause of action, wholly or in part, arises; or</li> <li>(d) <b>the complainant resides or personally works for gain.</b></li> </ul>	<p>(4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—</p> <ul style="list-style-type: none"> <li>(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, <b>ordinarily resides or carries on business or has a branch office or personally works for gain; or</b> or</li> <li>(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or</li> <li>(c) the cause of action, wholly or in part, arises; or</li> <li>(d) <b>the complainant resides or personally works for gain.</b></li> </ul>
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Transfer of Cases	No Provision	<p><b>48. Transfer of Cases</b> On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before a District Commission to another District Commission within the State if the interest of justice so requires.</p>
Procedure applicable to State Commissions	18. Procedure applicable to State Commissions The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.	<p><b>49. Procedure applicable to State Commissions</b> (1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission. <b>(2) Without prejudice to the provisions of sub-section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.</b></p>
Review by State Commission in certain Cases	No Provision	<p><b>50. Review by State Commission in certain Cases</b> The State Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.</p>
Appeal to National Commission	19. Appeals - Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (ii) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:	<p><b>51. Appeal to National Commission</b> (1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:</p>

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	<p>Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the state Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less.</p>	<p>Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period:</p> <p>Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.</p> <p>(2) <b>Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.</b></p> <p>(3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.</p> <p>(4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question:</p> <p>Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.</p> <p>(5) An appeal may lie to the National Commission under this section from an order passed ex parte by the State Commission.</p>
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<p><b>Hearing of appeal</b></p> <p>19A. Hearing of appeal – An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:</p> <p>Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:</p> <p>Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:</p> <p>Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.</p>	<p>52. Hearing of appeal – An appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal within a period of ninety days from the date of its admission:</p> <p>Provided that no adjournment shall ordinarily be granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:</p> <p>Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be specified by regulations:</p> <p>Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal</p>	<p><b>National Consumer Disputes Redressal Commission</b></p>	<p>9(C). Establishment of Consumer Disputes Redressal Agencies- There shall be established for the purposes of this Act, a National Consumer Disputes Redressal Commission established by the Central Government by notification.</p>	<p>53. Establishment of National Consumer Disputes Redressal Commission (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.</p>
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<p><b>Circuit Benches of National Commission</b></p> <p>22C. Circuit Benches – ‘The National Commission shall ordinarily function at New Delhi and, perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the official Gazette, from time to time.</p>	<p>53 (2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette:</p> <p><b>Provided that the Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.</b></p>	<p>54. Composition of the National Commission ‘The National Commission shall consist of—</p> <ul style="list-style-type: none"> <li>(a) a President; and</li> <li>(b) not less than four and not more than such number of members as may be prescribed.</li> </ul> <p>55. Qualifications, etc., of President and members of National Commission.</p> <p>(1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission:</p> <p>Provided that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment:</p> <p>Provided further that no President or members shall hold office as such after he has attained such age as specified in the rules</p>
<p><b>Composition of the National Commission</b></p> <p>20. Composition of the National Commission.—</p> <p>(1) The National Commission shall consist of—</p> <p>(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President; -</p> <p>Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;</p> <p>(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely :-</p> <ul style="list-style-type: none"> <li>(i) be not less than thirty-five years of age;</li> <li>(ii) possess a bachelor’s degree from a recognized university; and</li> <li>(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:</li> </ul>		

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Provided that not more than fifty per cent of the members shall be from amongst the persons having a judicial background. Explanation:- For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level: Provided further that a person shall be disqualified for appointment, if he –	made by the Central Government which shall not exceed,- (a) in the case of the President, the age of seventy years; (b) in the case of any other member, the age of sixty-seven years. (2) Neither the salary and allowances nor the other terms and conditions of service of President and members of the National Commission shall be varied to his disadvantage after his appointment.	(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or (b) is an undischarged insolvent; or (c) is of unsound mind and stands so declared by a competent court; or (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or (e) has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or (f) has such other disqualifications as may be prescribed by the Central Government. Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:-
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| (a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India - Chairman.   | (b) the Secretary in the Department of Legal Affairs in the Government of India-Member. | (c) Secretary of the Department dealing with consumer affairs in the Government of India -Member. |
| (1A) (i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.   |   |   |
| (ii) A Bench may be constituted by the President with one or more members as the President may deem fit.  |   |   |
| (iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it. |   |   |
| (2) The salary or honorarium and other allowances payable to and the other terms and conditions of service <sup>2[* * *]</sup> of the members of the National Commission shall be such as maybe prescribed by the Central Government.   |   |   |

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(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.
Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee: Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1):
Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.
(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

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<p>Other officers and employees of National Commission</p>	<p>No Provision</p> <p>57. Other officers and employees of National Commission.</p> <p>(1) The Central Government shall provide, in consultation with the President of the National Commission, such number of officers and other employees to assist the National Commission in the discharge of its functions as it may think fit.</p> <p>(2) The officers and other employees of the National Commission shall discharge their functions under the general superintendence of the President of the National Commission.</p> <p>(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Commission shall be such as may be prescribed.</p>
<p>Jurisdiction of the National Commission</p>	<p>21. Jurisdiction of the National Commission- Subject to the other provisions of this Act, the National Commission shall have jurisdiction-</p> <p>(a) to entertain-</p> <ul style="list-style-type: none"> <li>(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs; and</li> <li>(ii) appeals against the orders of any State Commission; and</li> </ul> <p>(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.</p> <p>58. Jurisdiction of the National Commission</p> <p>(1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction</p> <p>(a) to entertain-</p> <ul style="list-style-type: none"> <li>(i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore;</li> </ul> <p>Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;</p> <ul style="list-style-type: none"> <li>(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;</li> </ul> <p>(iii) appeals against the orders of any State Commission;</p> <p>(iv) <b>appeals against the orders of the Central Authority;</b> and</p> <p>(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided</p>

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	<p>by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.</p> <p>(2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit:</p> <p>Provided that the senior-most member of the Bench shall preside over the Bench.</p> <p>(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:</p> <p>Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.</p> <p>59. Procedure applicable to National Commission</p> <p>(1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be considered necessary, be applicable to the disposal</p>
22. Power of and procedure applicable to the National Commission	

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<p>(1) The provisions of sections 12, 13 and 14 and the rules made the reunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.</p> <p>(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.)</p>	<p>be applicable to the disposal of complaints by the National Commission</p> <p>(2) Without prejudice to sub-section (1), the National Commission may also declare any terms of contract, which is unfair to any consumer to be null and void.</p>
<p>Review by National Commission in certain cases</p>	<p>60. Review by National Commission in certain cases The National Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.</p>
<p>Power to set aside ex parte orders</p>	<p>61. Power to set aside ex parte orders Where an order is passed by the National Commission ex parte, the aggrieved party may make an application to the Commission for setting aside such order.</p>
<p>Transfer of cases</p>	<p>62. Transfer of cases</p>

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Vacancy in office of President of National Commission	<p>22D. Vacancy in the office of the President When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member by the senior most member of the District Forum, the State Commission or of the National Commission, as the case may be:</p> <p>Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person amongst such members, shall preside over the National Commission in the absence of President of that Commission.</p>	<p>63. Vacancy in office of President of National Commission When the office of President of the National Commission is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the National Commission:</p> <p>Provided that where a retired Judge of a High Court or a person who has been a Judicial Member is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person amongst such members, shall preside over the National Commission in the absence of President of that Commission.</p>	<p>64. Vacancies or defects in appointment not to invalidate orders No act or proceeding of the District Commission, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.</p> <p>65. Service of notice, etc.</p> <p>(1) All notices, required by this Act to be served, shall be served in the manner hereinafter mentioned in subsection (2).</p> <p>(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post</p>
Vacancies or defects in appointment not to invalidate orders	<p>29A. Vacancies or defects in appointment not to invalidate orders No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.</p>		
Service of notice, etc.	28A. Service of Notice, etc.—	(1) All notices, required by this Act to be served, shall be served in the manner hereinafter mentioned in subsection (2).	(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post

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	<p>acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (<i>including FAX message</i>). (DELETED)</p> <p>(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courierservice to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in Sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant.</p> <p>Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that</p> <p>District Commission, the State Commission or the National Commission, as the case may be, or by any other mode of transmission of documents <b>including electronic means.</b></p> <p><b>(2) Without prejudice to the provisions contained in sub-section (1), the notice required by this Act may be served on an electronic service provider at the address provided by it on the electronic platform from where it provides its services as such and for this purpose, the electronic service provider shall designate a nodal officer to accept and process such notices.</b></p> <p>(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent <b>or, as the case may be,</b> by the complainant is received by the District Commission, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Commission, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (1) when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice has been duly served on the opposite party or to the complainant, as the case may be:</p> <p>Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this</p>
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<p>the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.</p> <p>(4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried on, and in case of complainant, the place where such person actually and voluntarily resides.</p>	<p>a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or misplaced, or for any other reason, has not been received by the District Commission, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.</p> <p>(4) All notices required to be served on an opposite party or to complainant, <b>as the case may be,</b> shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried on, and in case of the complainant, the place where such person actually and voluntarily resides.</p>	<p>66. Experts to assist National Commission or State Commission</p> <p>Where the National Commission or the State Commission, as the case may be, on an application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.</p> <p>67. Appeal against order of National Commission</p> <p>Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:</p> <p>Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days</p>

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<p>if it is satisfied that there was sufficient cause for not filing it within that period.</p> <p>Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent of that amount or rupees fifty thousand, whichever is less.</p>	<p>Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:</p> <p>Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent of that amount in the manner as may be prescribed.</p> <p><b>24. Finality of orders-</b> Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.</p>
<p><b>Limitation period</b></p>	<p><b>24A. Limitation period.-</b></p> <p>(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen</p> <p>(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:</p> <p>Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Commission or the State Commission or the</p>

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<p>or the District Forum, as the case may be, records its reasons for condoning such delay.</p>	<p>National Commission, as the case may be, records its reasons for condoning such delay.</p>
<p><b>Administrative control</b></p> <p>(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely :-</p> <ul style="list-style-type: none"> <li>(i) calling for periodical return regarding the institution, disposal, pendency of cases;</li> <li>(ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;</li> <li>(iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.</li> </ul> <p>(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).</p>	<p>70. Administrative control</p> <p>(1) The National Commission shall have the authority to lay down such adequate standards in consultation with the Central Government from time to time, for better protection of the interests of consumers and for that purpose, shall have administrative control over all the State Commissions in the following matters, namely:-</p> <p class="list-item-l1">(a) <b>monitoring performance of the State Commissions in terms of their disposal</b> by calling for periodical returns regarding the institution, disposal and pendency of cases;</p> <p class="list-item-l1">(b) <b>investigating into any allegations against the President and members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action;</b></p> <p class="list-item-l1">(c) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;</p> <p class="list-item-l1">(d) overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other means, as the National Commission may like to order from time to time, to ensure that the objects</p>

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	<p>and purposes of the Act are best served and the standards set by the National Commission are implemented without interfering with their quasi-judicial freedom.</p> <p><b>(2) There shall be a monitoring cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.</b></p> <p>(3) The State Commission shall have administrative control over all the District Commissions within its jurisdiction in all matters referred to in sub-section (1).</p> <p><b>(4) The National Commission and the State Commissions shall furnish to the Central Government periodically or as and when required, any information including the pendency of cases in such form and manner as may be prescribed.</b></p> <p><b>(5) The State Commission shall furnish, periodically or as and when required to the State Government any information including pendency of cases in such form and manner as may be prescribed.</b></p> <p>71. Enforcement of orders by the Forum, the State Commission or the National Commission.-</p> <p><i>(1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.</i></p> <p><i>(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if</i></p>
Enforcement of orders by the Forum, the State Commission or the National Commission	<p>24. Enforcement of orders by the Forum, the State Commission or the National Commission.-</p> <p><i>(1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.</i></p> <p><i>(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if</i></p>

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<p><i>the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.</i></p> <p><i>(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the Distt. Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission and the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.</i></p> <p style="text-align: right;">(DELETED)</p>	<p>26. Dismissal of frivolous or vexatious complaints- Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.</p>	<p>No Provision</p> <p>72. Penalty for Non-compliance of order            (1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three</p>
<p>Dismissal of frivolous or vexatious complaints</p>	<p>27. Penalties-</p> <p><i>(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment</i></p>	<p>468</p>

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<p>for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:</p> <p>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.</p> <p><b>(3) Save as otherwise provided, the offences under subsection (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.</b></p>	<p>years, or with fine, which shall not be less than <b>twenty-five thousand rupees, but which may extend to one lakh rupees,</b> or with both. (Increased penalty)</p> <p>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.</p> <p><b>(3) Save as otherwise provided, the offences under subsection (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.</b></p>	<p>73. Appeal against order passed under section 27 –</p> <p>(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from –</p> <p>(a) the order made by the District Forum to the State Commission;</p> <p>(b) the order made by the State Commission to the National Commission; and</p>
<p>Appeal against order passed under Sec.27 of CPA 1986 or Under Sec. 72 of CPA 2019</p>	<p>27A. Appeal against order passed under section 27 –</p> <p>(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from –</p> <p>(a) the order made by the District Forum to the State Commission;</p> <p>(b) the order made by the State Commission to the National Commission; and</p>	

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<p>(c) the order made by the National Commission to the Supreme Court.</p> <p>(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.</p> <p>(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:</p> <p>Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.</p>	<p>(c) the order made by the National Commission to the Supreme Court.</p> <p>(2) Except as provided in sub-section (1), no appeal shall lie before any court, from any order of a District Commission or a State Commission or the National Commission, as the case may be.</p> <p>(3) Every appeal under this section shall be preferred within a period of thirty days from the date of order of a District Commission or a State Commission or the National Commission, as the case may be:</p> <p>Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not referring the appeal within the said period of thirty days.</p>
<p><b>CHAPTER-V</b></p> <p><b>MEDIATION</b></p>	<p><b>74. Establishment of consumer mediation cell</b></p> <p>(1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.</p> <p>(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.</p> <p>(3) A consumer mediation cell shall consist of such persons as may be prescribed.</p>

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	<p>(4) Every consumer mediation cell shall maintain-</p> <ul style="list-style-type: none"> <li>(a) a list of empanelled mediators;</li> <li>(b) a list of cases handled by the cell;</li> <li>(c) record of proceeding; and (d) any other information as may be specified by regulations.</li> </ul> <p>(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.</p>
Empanelment of mediators	No Provision

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Nomination of mediators from panel	No Provision	76. Nomination of mediators from panel The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved.
Duty of mediator to disclose certain facts	No Provision	77. Duty of mediator to disclose certain facts It shall be the duty of the mediator to disclose- <ul style="list-style-type: none"> <li>(a) any personal, professional or financial interest in the outcome of the consumer dispute;</li> <li>(b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and</li> <li>(c) such other facts as may be specified by regulations.</li> </ul>
Replacement of mediator in certain cases	No Provision	78. Replacement of mediator in certain cases Where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.
Procedure for mediation	No Provision	79. Procedure for mediation <ul style="list-style-type: none"> <li>(1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.</li> <li>(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and</li> </ul>

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	<p>obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.</p> <p>(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.</p>	<p>80. Settlement through mediation</p> <p>(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.</p> <p>(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.</p> <p>(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.</p>
Settlement through mediation	No Provision	<p>81. Recording settlement and passing of order</p> <p>(1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.</p>
Recording settlement and passing of order.	No Provision	

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		<p>(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.</p> <p>(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.</p>	
<b>CHAPTER-VI</b>			
APPLICATION OF CHAPTER	PRODUCT LIABILITY	82. Application of Chapter	
No Provision		This Chapter shall apply to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.	
Product liability action		83. Product liability action  A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.	
Liability of product manufacturer.		84. Liability of product manufacturer  (1) A product manufacturer shall be liable in a product liability action, if-	
		(a) the product contains a manufacturing defect; or (b) the product is defective in design; or (c) there is a deviation from manufacturing specifications; or	

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	<ul style="list-style-type: none"> <li>(d) the product does not conform to the express warranty; or</li> <li>(e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.</li> </ul> <p>(2) A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.</p>	<p>85. Liability of product service provider</p> <p>A product service provider shall be liable in a product liability action, if:</p> <ul style="list-style-type: none"> <li>(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or</li> <li>(b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or</li> <li>(c) the service provider did not issue adequate instructions or warnings to prevent any harm; or</li> <li>(d) the service did not conform to express warranty or the terms and conditions of the contract.</li> </ul> <p>86. Liability of product sellers.</p> <p>A product seller who is not a product manufacturer shall be liable in a product liability action, if-</p> <ul style="list-style-type: none"> <li>(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or</li> </ul>
Liability of product sellers	No Provision	

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<ul style="list-style-type: none"> <li>(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or</li> <li>(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or</li> <li>(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or</li> <li>(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm</li> </ul>	<p>87. Exceptions to product liability action.</p> <p>(1) A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.</p> <p>(2) In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if-</p> <p>(a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;</p>
Exceptions to product liability action.	

<ul style="list-style-type: none"> <li>(b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;</li> <li>(c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or</li> <li>(d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.</li> </ul> <p>(3) A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.</p>	<p><b>CHAPTER-VII</b> <b>OFFENCES AND PENALTIES</b></p> <p><b>88. Penalty for noncompliance of direction of Central Authority</b></p> <p>Whoever, fails to comply with any direction of the Central Authority under sections 20 and 21, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.</p>
Penalty for noncompliance of direction of Central Authority	No Provision

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Punishment for false or misleading advertisement.	No Provision	<p>89. Punishment for false or misleading advertisement</p> <p>Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.</p>
Punishment for Manufacturing for sale or storing, selling or distributing or importing products Containing adulterant	No Provision	<p>90. Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant.</p> <p>(1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act-</p> <ul style="list-style-type: none"> <li>(a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;</li> <li>(b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;</li> <li>(c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and</li> <li>(d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.</li> </ul>

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	<p>(2) The offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.</p> <p>(3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.</p> <p>Explanation—For the purposes of this section,—</p> <ul style="list-style-type: none"> <li>(a) “adulterant” means any material including extraneous matter which is employed or used for making a product unsafe;</li> <li>(b) “grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.</li> </ul> <p>91. Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods.</p> <p>(1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act—</p> <ul style="list-style-type: none"> <li>(a) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;</li> <li>(b) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;</li> <li>(c) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.</li> </ul>
Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods	

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	<p>(2) The offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.</p> <p>(3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.</p>
Cognizance of offence by court	<p>No Provision</p> <p>92. Cognizance of offence by court No cognizance shall be taken by a competent court of any offence under sections 88 and 89 except on a complaint filed by the Central Authority or any officer authorised by it in this behalf.</p>
Vexatious search	<p>No Provision</p> <p>93. Vexatious search. The Director General or any other officer, exercising powers under section 22, who knows that there are no reasonable grounds for so doing, and yet— (a) searches, or causes to be searched any premises; or (b) seizes any record, register or other document or article, shall, for every such offence, be punished with imprisonment for a term which may.</p>
	<p><b>CHAPTER-VIII</b> <b>MISCELLANEOUS</b></p> <p>94. Measures to prevent unfair trade practices in e-commerce, direct selling, etc. For the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed.</p>
Measures to prevent unfair Trade practices in e-commerce, direct selling, etc.	

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<p>Presidents, members, Chief Commissioner, Commissioner and certain officers to be public servants</p>	<p>No Provision</p> <p>95. Presidents, members, Chief Commissioner, Commissioner and certain officers to be public servants The Presidents and members of the District Commission, the State Commission and the National Commission, and officers and other employees thereof, the Chief Commissioner and the Commissioner of the Central Authority, the Director General, the Additional Director General, the Director, the Joint Director, the Deputy Director and the Assistant Director and all other officers and employees of the Central Authority and other persons performing any duty under this Act, while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.</p>
<p>Compounding of offences</p>	<p>No Provision</p> <p>96. Compounding of offences (1) Any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed: Provided that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92: Provided further that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded. (2) The Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub-section (1).</p>

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	<p>(3) Nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.</p> <p>Explanation.—For the purposes of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.</p> <p>(4) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.</p> <p>(5) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973.</p>
Manner of crediting penalty	<p>97. Manner of crediting penalty The penalty collected under section 21 and the amount collected under section 96 shall be credited to such fund as may be prescribed</p>
Protection of action taken in good faith	<p>28. Protection of action taken in good faith— No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National</p> <p>98. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Presidents and members of the District Commission, the State Commission and the National Commission, the Chief Commissioner, the Commissioner, any officer or employee and other person performing any duty under this Act, for any act which is in good faith done or intended to be done in</p>

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<p>Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.</p>	<p>Power to remove difficulties</p> <p>29. Power to remove difficulties—          (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall, as soon as may be after it is made be laid before each House of Parliament.</p> <p>(3) If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amendment) Act, 2002.</p> <p>(4) Every order made under sub-section (3) shall be laid before each House of Parliament. (DELETED)</p>	<p>pursuance of this Act or under any rule or order made thereunder.</p> <p>106. Power to remove difficulties          If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:          Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.</p>	<p>No Provision</p>	<p>99. Power to give directions by Central Government          (1) Without prejudice to the foregoing provisions of this Act, the Central Authority, shall, in exercise of its powers or</p>
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	<p>the performance of its functions under this Act, be bound by such directions on questions of policy, as the Central Government may give in writing to it from time to time: Provided that the Central Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.</p> <p><b>30. Power to make rules-</b>          (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2] clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, clause (vii) of sub-section (4) of section 13, section 19, sub-section (2) of section 20 and section 22 of this Act.</p> <p><b>101. Power of Central Government to make rules</b>          (1) The Central Government may, by notification, make rules for carrying out any of the provisions contained in this Act.          (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—  <ul style="list-style-type: none"> <li>(a) the other class or classes of persons including public utility entities under clause (19) of section 2;</li> <li>(b) the contest, lottery, game of chance or skill which are to be exempted under item (b) of sub-clause (iii) of clause (47) of section 2;</li> <li>(c) the manner of issuing bill or cash memo or receipt for goods sold or services rendered under sub-clause (vii) of clause (47) of section 2;</li> <li>(d) the number of other official or non-official members of the Central Council under clause (b) of sub-section (2) of section 3;</li> <li>(e) the time and place of meeting of Central Council and the procedure for the transaction of its business under sub-section (2) of section 4;</li> <li>(f) the number of Commissioners in the Central Authority under sub-section (2) of section 10;</li> </ul> </p>
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		(g) the qualifications for appointment, method of recruitment, procedure of appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chief Commissioner and other Commissioners of the Central Authority under section 11; (h) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority under sub-section (2) of section 13; (i) the qualifications for appointment of Director General, Additional Director General, Director, Joint Director, Deputy Director and Assistant Director and the manner of appointment under sub-section (2) of section 15; (j) the manner of taking copies or extracts of document, record or article seized or produced before returning to the person under sub-section (3) of section 22; (k) the officer and the manner of disposing of articles which are subject to speedy or natural decay under sub-section (4) of section 22; (l) the form and manner for preparing annual statement of accounts by the Central Authority in consultation with the Comptroller and Auditor-General of India under sub-section (1) of section 26; (m) the form in which, and the time within which, an annual report, other reports and returns may be prepared by the Central Authority under sub-section (1) of section 27; (n) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation	

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	<p>and removal of President and members of the District Commission under section 29;</p> <p>(o) the other value of goods and services in respect of which the District Commission shall have jurisdiction to entertain complaints under proviso to sub-section (1) of section 34;</p> <p>(p) the manner of electronically filing complaint under the proviso to sub-section (1) of section 35;</p> <p>(q) the fee, electronic form and the manner of payment of fee for filing complaint under sub-section (2) of section 35;</p> <p>(r) the cases which may not be referred for settlement by mediation under sub-section (1) of section 37;</p> <p>(s) the manner of authentication of goods sampled in case of the National Commission under clause (c) of sub-section (2) of section 38;</p> <p>(t) any other matter which may be prescribed under clause (f) of sub-section (9) of section 38;</p> <p>(u) the fund where the amount obtained may be credited and the manner of utilisation of such amount under sub-section (2) of section 39;</p> <p>(v) the form and the manner in which appeal may be preferred to the State Commission under section 41;</p> <p>(w) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the State Commission under section 43;</p> <p>(x) the other value of goods and services in respect of which the State Commission shall have jurisdiction under the proviso to sub-clause (i) of clause (a) of sub-section (1) of section 47;</p>
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	<p>(y) the form and manner of filing appeal to the National Commission, and the manner of depositing fifty per cent. of the amount before filing appeal, under sub-section (1) of section 51;</p> <p>(z) the number of members of the National Commission under clause (b) of section 54;</p> <p>(za) the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission under sub-section (1) of section 55;</p> <p>(zb) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the National Commission under sub-section (3) of section 57;</p> <p>(zc) the other value of goods and services in respect of which the National Commission shall have jurisdiction under the proviso to sub-clause (i) of clause (a) of sub-section (1) of section 58;</p> <p>(zd) the manner of depositing fifty per cent. of the amount under the second proviso to section 67;</p> <p>(ze) the form in which the National Commission and the State Commission shall furnish information to the Central Government under sub-section (4) of section 70;</p> <p>(zf) the persons in the consumer mediation cell under sub-section (3) of section 74;</p> <p>(zg) the measures to be taken by the Central Government to prevent unfair trade practices in e-commerce, direct selling under section 94;</p>

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		<ul style="list-style-type: none"> <li>(zh) the amount for compounding offences under sub-section (1) of section 96;</li> <li>(zi) the fund to which the penalty and amount collected shall be credited under section 97; and</li> <li>(zj) any other matter which is to be, or may be, prescribed, or in respect of which provisions are to be, or may be, made by rules.</li> </ul>
Power of State Government to make rules-		<p>30. Power to make rules:-</p> <p>2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 14, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.).</p> <p>102. Power of State Government to make rules</p> <p>(1) The State Government may, by notification, make rules for carrying out the provisions of this Act:</p> <p>Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <ul style="list-style-type: none"> <li>(a) the other class or classes of persons including public utility entities under clause (19) of section 2;</li> <li>(b) the contest, lottery, game of chance or skill which are to be exempted under item (b) of sub-clause (iii) of clause (47) of section 2;</li> <li>(c) the number of other official or non-official members of the State Council under clause (b) of sub-section (2) of section 6;</li> </ul>

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	(d) the time and place of meeting of the State Council and the procedure for the transaction of its business under sub-section (4) of section 6;
	(e) the number of other official and non-official members of District Council under clause (b) of sub-section (2) of section 8;
	(f) the time and place of meeting of the District Council and procedure for the transaction of its business under sub-section (4) of section 8;
	(g) the number of members of the District Commission under clause (b) of sub-section (2) of section 28;
	(h) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the District Commission under section 30;
	(i) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the District Commission under sub-section (3) of section 33;
	(j) the manner of authentication of goods sampled by the State Commission and the District Commission under clause (c) of sub-section (2) of section 38;
	(k) the manner of depositing fifty per cent. of the amount before filing appeal under second proviso to section 41;
	(l) the number of members of the State Commission under sub-section (3) of section 42;
	(m) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the State Commission under section 44;
	(n) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the State Commission under sub-section (3) of section 46;

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	<ul style="list-style-type: none"> <li>(o) the form in which the State Commission shall furnish information to the State Government under sub-section (5) of section 70;</li> <li>(p) the persons in the consumer mediation cell under sub-section (3) of section 74;</li> <li>(q) any other matter which is to be, or may be prescribed, or in respect of which provisions are to be, or may be, made by rules.</li> </ul>
Power of the National Commission to make regulations –	<p>30A. Power of the National Commission to make regulations –</p> <p>(1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for—</p> <ul style="list-style-type: none"> <li>(a) the costs for adjournment to be imposed by the District Commission under the second proviso to sub-section (7) of section 38;</li> <li>(b) the costs for adjournment to be imposed by the State Commission or the National Commission, as the case may be, under the second proviso to section 52;</li> <li>(c) the maintenance of any other information by the consumer mediation cell under sub-section (4) of section 74;</li> <li>(d) the manner of submission of quarterly report by consumer mediation cell to the District Commission, the State Commission or the National Commission undersub-section (5) of section 74;</li> </ul>

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	<ul style="list-style-type: none"> <li>(e) the qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and the other matters relating thereto under sub-section (2) of section 75;</li> <li>(f) the conditions for re-empanelment of mediators for another term under sub-section (3) of section 75;</li> <li>(g) the other facts to be disclosed by mediators under clause (c) of section 77;</li> <li>(h) the time within which, and the manner in which, mediation may be conducted under sub-section (3) of section 79; and</li> <li>(i) such other matter for which provision is to be, or may be, made by regulation.</li> </ul>
Power of Central Authority to make regulations	No Provision

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	<p>(b) the procedure for transaction of business and the allocation of business of the Chief Commissioner and Commissioner under sub-section (1) of section 14;</p> <p>(c) the form, manner and time within which, inquiries or investigation made by the Director-General shall be submitted to the Central Authority under sub-section (5) of section 15; and</p> <p>(d) such other matter for which provision is to be, or may be, made by regulation</p> <p>105. Rules and regulations to be laid before each House of Parliament</p> <p>(1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p> <p>(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.</p>
Rules and regulations to be laid before each House of Parliament -	

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Repeal and savings	No Provision  107. Repeal and Saving (1) The Consumer Protection Act, 1986 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act. (3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.
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