

INTRODUCTION

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well organised sector of manufactures and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there may be manufacturing defects or imperfections or short comings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In addition, the production of the same item by many firms has led the consumers, who have little time to make a selection, to think before they can purchase the best. For the welfare of the public, the glut of adulterated and sub-standard articles in the market have to be checked. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in the different enactments like Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, the Standards of Weights and Measures Act, 1976 and the Motor Vehicles Act, 1988, very little could be achieved in the field of Consumers Protection. Though the Monopolies and Restrictive Trade Practices Act, 1969 and the Prevention of Food Adulteration Act, 1954 have provided relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulteration and sub-standard goods and services and to safeguard the interests of the consumers. In order to provide for better protection of the interests of the consumer the Consumer Protection Bill, 1986 was introduced in the Lok Sabha on 5th December, 1986.

STATEMENT OF OBJECTS AND REASONS

1. The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.
2. It seeks, inter alia, to promote and protect the rights of consumers such as—
 - (a) the right to be protected against marketing of goods which are hazardous to life and property;
 - (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
 - (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
 - (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
 - (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers: and
 - (f) right to consumer education.
3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.
4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central level. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.
5. The Bill seeks to achieve the above objects.

ACT 68 OF 1986

The Consumer Protection Bill, 1986 was passed by both the Houses of Parliament and it received the assent of the President on 24th December, 1986. It came on the Statutes Book as the Consumer Protection Act, 1986 (68 of 1986).

LIST OF AMENDING ACTS

1. The Consumer Protection (Amendment) Act, 1991 (34 of 1991).
2. The Consumer Protection (Amendment) Act, 1993 (50 of 1993).

THE CONSUMER PROTECTION ACT, 1986

(68 of 1986)

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 consumer' disputes and for matters connected therewith.

Be it enacted by Parliament in the Thirty–seventh Year of the Republic of India as Follows:–

CHAPTER I

PRELIMINARY

1.Short title, extent, commencement and application.–

(1) This Act may be called the Consumer Protection Act,1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.

(4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

2.Definitions.–

(1) In this Act, unless the context otherwise requires,–

(a) "appropriate laboratory" means a laboratory or organisation–

(i) recognised by the Central Government;

(ii) recognised by State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation 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;]

(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;]

(b) "complainant" means–

(i) a consumer; or

(ii) any voluntary consumer association registered under the companies Act,1986(1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government;

[(iv) one or more consumers, where there are numerous consumers having the same interest;]

who or which makes a complaint;

(c) "complaint" means any allegation in writing made by a complainant that–

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;

(ii) [the goods bought by him or agreed to be bought by him] suffer from one or more defects;

(iii) [the service hired or availed of a agreed to be hired or availed of by him] suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;

(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods,

with a view to obtaining any relief provided by or under this Act,

(d) "consumer" means any person who–

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any

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system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment,

when such services are availed of with the approval of the first mentioned person;

Explanation.—For the purpose 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

(e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint;

(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;

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner or 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;

(h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9;

(i) "goods" means goods as defined in the sale of Goods Act, 1930;

(j) "manufacturer" means a person who—

(i) Makes or manufacture any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

Explanation.— Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

(j) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;

(k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

(l) "notification" means a notification published in the Official Gazette;

(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;

(n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government, under this Act;

(nn) "restrictive trade practice" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;

(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

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information, but does not include the rendering of any service free of charge or under a contract of personal service;

(p) "State Commission" means a Consumer Dispute Redressal Commission established in a state under clause (b) of section 9;

(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 soled or distributed in package form, includes the packer thereof;

(r) "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;—

(1) the practice of making any statement, whether orally or in writing or by visible representation which;—

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, recondition or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(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: Provided that where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

(viii) Makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(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;

(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, 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;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation:— For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(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

(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;

(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 qualities 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.

Explanation:— For the purpose of clause (2), "bargaining price" means—

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(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
(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;

(3) permits–

(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;

(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;

(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;

(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.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such areas.

COMMENTS

(i) The student is a consumer of service of educational institute; *Sushant Yuvaraj Roade v. Shri Ramdeobaba Engineering Collage*, 1993 (III)CPR 624.

(ii) A person who receives medical treatment in a Government hospital is not consumer under the Act; *Consumer Unity & Trust Society v State of Rajasthan*, (1991) 1 CPR 241. However, the State Commission of Orissa held that a patient is a Consumer being the beneficiary of services in as much as the State Government is paying the consideration amount in the form of salary to the doctors and hospital staff; *Smt. Sukanti Behera v Dr.Shashi Bhusan Rath*, II(1993) CPJ 633.

(iii) A licensee to run a phone is not consumer; *Techno combine Associates v.Union of India*, 1(1994 CPJ 481:1994 (I)CPR 298.

(iv) A lottery ticket holder is not "consumer" within the ambit of the definition of "consumer" under the Act; *Jagdish Chand v.Director,Sikkim State Lottery*, 1994(i) CPR 213.

(v) Applicant who merely applies for allotment of shares is not a consumer; *H.G. Bhatia v.ABC Computers Pvt. Ltd.*,1994(I) CPR 316.

(vi) The beneficial consumer jurisdiction cannot be extended to lotteries and wagering transactions or consequential rights flowing from void contracts; *Jadish Chand v. Director, Sikkim State Lotteries*, 1994(I) CPR 213.

(vii) If somebody does not perform his part of the contract, it amounts to deficiency in service; *Smt. Ramala Roy v. Rabindra Nath Sen*, 1994 (I) CPR 66.

(viii) The agreement for hypothecation does not create the ownership right, and as such no complaint can be maintained for deficiency in service; *Jayantlal Keshavlal Chauhan v. The National Insurance Company Ltd.*, 1994 (I) CPR 390.

(ix) Undue delay in declaration of examination result is obviously deficiency in service; *Secretary, Board of School Education, Haryana v. Mukesh Chand*, 1994 (I) CPR 269.

(x) When there is default or negligence in regard to service that will constitute deficiency in service on the part of the opposition party and it is perfectly open to the aggrieved consumer to seek appropriate relief under the Act; *S.K. Lakhota v. National Insurance Co. Ltd.*, 1994 (I)CPR 43.

(xi) Discriminatory service or arbitrary action, is a "deficiency", *Orissa State Housing Board v. Bishwanath Misra*, II (1994) CPJ 377:1994 (I) CPR 78.

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(xii) The repudiation of the claim by the Insurance Company on the ground that the driver was not holding a valid driving license at the time of the accident could not be termed as deficiency in service or negligence on the part of the Insurance Company within the meaning of section 2(g) of the Act; *New India Assurance Co. Ltd. v. Smt. Pushpa Yashwant Ghatge*, 1996 NCJ 195.

(xiii) Medical services are covered under the definition of "service" includes rendering of consultation, diagnosis and treatment, both medical 3.

(xiv) "Contract of personal service" has to be distinguished from a "contract for personal service". In the absence of relationship of master and servant between the patient and the medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a contract of personal service. It is "contract for personal services". Wherever, there is relationship like that of master and servant it is a "contract of personal service" and is excluded from the purview of the Act; *Indian Medical Association v. V.P. Shantha*, 1995 SCALE 273.

3. 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.

COMMENTS

(i) The remedy provided under the Act is in addition to the provisions of any other law for the time being in force. The provisions of this Act give the consumer an additional remedy besides those that may be available under other existing laws; *The Consumer & Citizens Forum v. Karnataka Power Corporation*, 1994 (I) CPR 130.

(ii) When a case is pending in a court in which full evidence is to be recorded the Forums constituted under the Consumer Protection Act, 1986 should not entertain the complaint with respect to the same cause of action; *Hanuman Prasad v. The New India Assurance Co. Ltd.*, I (1994) CPJ 1(NC).

(iii) It is nowhere laid down that whenever the examination and cross-examination is involved, the proper forum for adjudication of the dispute is only Civil Court; *S.K. Lakhota v. National Insurance Co.Ltd.*, 1994 (I) CPR 43.

(iv) It is authoritatively settled that the arbitration clause is not a bar to the entertainment of the complaint by the Redressal Agency constituted under the Act, even if the arbitration provision has been laid down in a statute; *Ram Nath v. Improvement Trust, Bhatinda*, 1994 (I)CPR 357.

CHAPTER II

CONSUMER PROTECTION COUNCILS

4. The Central Consumer Protection Council.—

(1) The Central Government may by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

- (a) the Minister in charge of the [consumer affairs] in the Central Government, who shall be its Chairman, and
- (b) such number of other official or non-official members representing such interests as may be prescribed.

5. Procedure for meetings of the Central Council.—

(1) The Central Council shall meet as and when necessary, but [at least one meeting] of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

6. Objects of the Central Council.— The objects of the Central Council shall be to promote and protect the rights of the consumers such as, —

- (a) the right to be protected against the marketing of goods [and services] which are hazardous to life and property.
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods [or services, as the

case may be] so as to protect the consumer against unfair trade practices.

(c) the right to be assured, wherever possible, access to a variety of goods [and services] at competitive prices.

(d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices [or restrictive trade practices] or unscrupulous exploitation of consumers; and

(f) the right to consumer education.

7. The State Consumer Protection Councils.–

(1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for (hereinafter referred to as the State Council).

(2) The State Council shall consist of the following members, namely:–

(a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;

(b) such number of other official or non–official members representing such interests as may be prescribed by the State Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

8. Objects of the State Council.– The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

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

(a) a Consumer Disputes Redressal Forum to be known as the " District Forum" established by the State Government 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;

(b) a Consumer Dispute Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and

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

COMMENTS

(i) If a redressal forum has no jurisdiction, it cannot entertain the complaint on merits; *Solvochen Intermediates Pvt. Ltd. v. Boilertech Engineers Pvt. Ltd.*, 1992 (II) CPR 322.

(ii) When no objection was taken to the territorial jurisdiction of District Forum by filing written version, the objection cannot be entertained in appeal raised orally; *Essen Computers Ltd. v. Tagore Gracias*, 1992 (II) CPR 556.

(iii) One or more consumers can file complaint; *Chief General Manager, Calcutta Telephones v. International Packers & Movers*, I (1994) CPJ 132:1994 (I) CPR 252.

10. Composition of the District Forum.– Each District Forum shall consist of,–

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration , one of whom shall be a woman.

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(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, namely :—

- (i) the President of the State Commission –Chairman.
- (ii) Secretary, Law Deptt. of the State –Member.
- (iii) Secretary, incharge of the Deptt. –Member. dealing with consumer affairs in the State

(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, and shall not be eligible for re-appointment: Provided 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 the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

(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.

11. Jurisdiction of the District Forum.—

(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 five lakhs].

(2) A complaints shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(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

(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

(c) the cause of action, wholly or in part, arises.

COMMENTS

(i) A petition of complaint can be filed against corporation carrying on business within the territory of District Forum or Commission even though its sole or principal office is situated outside state limits; Consumer Education and Research Society v. Canara Bank, (1991) CPR 405.

(ii) Objections regarding territorial jurisdiction should be taken at the earliest opportunity or the same deemed to have been waived; Kurukshetra University v. Vinay Prakash Verma, II (1993) CPJ 647.

12. Manner in which complaint shall be made.— 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—

(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;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(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

(d) the Central or the State Government.

Explanation.— 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.

COMMENTS

(i) A municipality has been ordered to pay damages for shortage of drinking water; Wangdi Tshering v. Chairman, Kurseong Municipality, 1993 (2) CPR 476.

(ii) Compensation of Rs. 5 lakhs was awarded for non-delivery of possession of plot and wrongful cancellation; P. Parthasarthy v. The Tamil Nadu Housing Board, 1993 (2) CPR 445.

13.Procedure on receipt of Complaint.–

(1) The District Forum shall, on receipt 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 complaint 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 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;

(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 fee 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;

(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;

(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;

(g) the District Forum shall thereafter 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 laboratory and also as to the objections made in relation thereto under clause

(f) and issue an appropriate order under section 14.

(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,–

(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;

(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,–

(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

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(ii) 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.

(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 principals of natural justice have not been complied with.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
- (ii) the discovery and production of any document or other material object producible as evidence,
- (iii) the reception of evidence on affidavits,
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source.
- (v) issuing of any commission for the examination of any witness, and
- (vi) any other matter which may be prescribed.

(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 (45 of 1860), and the District Forum shall be deemed to be a civil court for the purpose of section 195, and chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 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 Forum thereon.

COMMENTS

(i) When the case is not a simple case of deficiency in service and involves determination of complex questions of facts and law, which cannot be satisfactorily determined by the redressal agency in the time frame provided under the rules, it would be better for the complainant to seek redress of this grievance in a Civil Court, if so advised; Harbans & Co. v. State Bank of India, II (1994) CPJ 456: 1994 (I) CPR 381.

(ii) If "fraud" is alleged, it is desirable that the complainant should be directed to Civil Court as investigation about such fraud is required to be done; Jayantilal Keshavlal Chauhan v. The National Insurance Co. Ltd., 1994 (I) CPR 396.

(iii) A consumer knocking at the door of the redressal agency under the Act for relief in a consumer dispute must do so with clean hands; Sagli Ram v. General Manager, United India Insurance Co. Ltd., II (1994) CPJ 444: 1994 (I) CPR 434.

14. Finding of the District Forum.—

(1) 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 are proved, it shall issue an order to the opposite party directing him to [do] one or more of the following things, 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;
- (e) to remove the defects 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;

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(i) to provide for adequate costs to parties.

(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: Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo.

(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: Provided that where the proceeding is conducted by the President and one member and they differ on any point 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.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sitting and other matters shall be such as may be prescribed by the State Government.

COMMENTS

(i) Compensation is to be given for loss or injury suffered by a consumer, due to negligence of the opposite party; *S K Lakhotia v. National Insurance Co. Ltd.*, 1994 (I) CPR 43.

(ii) The party to be awarded compensation has not only to show deficiency in service but also the negligence of the other party and without the finding or negligence there cannot be any award; *Director, Himachal Institute of Engineering and Technology v. Anil Kumar Gupta*, 1994 (I)CPR 182.

(iii) Delay in delivery after booking of a car is no deficiency; *M/s Maruti Udyog Ltd. v. Bhuvana Viswanathan*, II (1993) CPJ 172 (NC).

(iv) Redressal forums have no jurisdiction in matter involving outright sale of immovable property at an auction; *Allied (Garments) Exports Industries Pvt. Ltd. v. D.D.A.*, II (1992) CPJ 505 (NC).

(v) Consumer Forums have no jurisdiction to pass interim orders; *District Manager, Telephones v. M/s Munilal Brij Mohan*, I (1993) CPJ 41 (NC).

(vi) If a consumer sustained any loss or damage actually, he is entitled to compensation; *Padamanav Dash v. Divisional Rly. Manager, S.E. Rly.*, 1994 (I) CPR 77.

(vii) The Fora have no jurisdiction to pass interim order. The complaint was filed to restrain a public issue. It was also held that unsuccessful applicants, who have not been allotted any shares cannot prefer a complaint under the Act; *Morgan Stanley v. Kartik Das*, II (1994) CPJ 7 (SC).

15. Appeal.— Any person aggrieved by an order made by the District forum may prefer an appeal against such order to the State Commission within a period of 30 days 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 thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

COMMENTS

(i) The appellate fora constituted under the Act should not dismiss the appeal merely on the ground of default of appearance of the appellant but the merits of the case should be considered on the basis of the material available before them and thereafter pass appropriate order in the appeal; *General Manager, Telecom v. Jyantilal Hemchand Gandhi*, 1993 (III) CPR 155.

(ii) Ordinarily, the appellate Court does not interfere with the compensation awarded unless it is too inadequate or too excessive; *Narmada v. Suresh Chandra Mittal*, 1993 (I) AJR 631.

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;

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(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman: Provided that every appointment made under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, 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.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

(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 and shall not be eligible for reappointment.

(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.

17. Jurisdiction of the State Commission– Subject to the other provisions of this Act, the State Commission shall have jurisdiction–

(a) to entertain–

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees [five lakhs but does not exceed rupees twenty lakhs]; and

(ii) appeals against the orders of any District Forum within the State; and

(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.

COMMENTS

Even if the appeal is not maintainable, the State Commission can still treat and decide the same as revision in exercise of its power under section 17(b) of the Act; C.R. Kataria, Telecom District Manager v. The Consumer Disputes Redressal District Forum, 1991 (II) CPJ 682.

18. Procedure applicable to State Commissions.– The provisions of Section 12, 13 and 14 and the rules made there under] 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.

COMMENTS

Section 11(2) (c) is not made applicable under section 18 of the Act. However, principle in respect of territorial jurisdiction of a State Commission would be governed under the Code of Civil Procedure; ArisettySanyasi Raju v. Hindustan Motors Ltd., 1992 (I) CPR 689.

18–A. Vacancy in the office of the President.– When the office of the President of the District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be, of the State Commission, as the State Government may appoint for the purpose.

19. Appeals.— Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) 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. 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.

20. Composition of the National Commission.—

(1) The National Commission shall consist of —

(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; Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) four other members who shall be person of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman: 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:—

(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 IndiaMember. (c) Secretary of the Department dealing with consumer affairs in the Government of IndiaMember.

(2) The salary or honorarium and other allowances payable to and other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

(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 reappointment.

(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.

21. Jurisdiction of the National Commission.— Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of goods or services and compensation, if any, claimed exceeds rupees [twenty lakhs]; and

(ii) appeals against the orders of any State Commission; and (b) to call for the record 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.

COMMENTS

The powers of National Commission are very limited; Kangara Ananth Ram v. Telecom Distt. Engineer, (1991) 1 CPR 391.

22. Power of and procedure applicable to the National Commission.— The National Commission shall, in the disposal of any complaints or any proceedings before it, have—

(a) the powers of a civil court as specified in sub-section (4), (5) and (6) of section 13;

(b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clause (a) to (i) of sub-section (1) of section 14, and follow such procedure as may be prescribed by the Central Government].

23. Appeal.— 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: 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.

24. Finality of orders.— 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.

24A. Limitation period.—

(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.

(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 complaints within such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

24B. Administrative Control.—

(1) The National Commission, shall have administrative control over all the State Commissions in the following matter, namely;—

(i) calling for periodical return regarding the institution, disposal, pendency of cases;

(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 copy of documents;

(iii) generally overseeing the functioning of the State Commission 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.

(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).

25. Enforcement of orders by the Forum, the State Commission to the National Commission.— Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

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.

COMMENTS

(i) Where the issue involved is a legal issue, the complaint cannot said to be frivolous; Rasikalal Mohanlal v. Apollo Tyres Ltd., 1992 (II) CPR 327.

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- (ii) Where the complaint is mala fide, vexatious and frivolous and the opposite party has to incur expenses for contesting the complaint, the Redressal Fora should saddle the complainant with costs; *K. Jayaraman v. The Poona Hospital and Research Centre*, 1994 (I) CPR 23.
- (iii) Merely because no court fee is payable for lodging a complaint before the consumer forums, parties have a tendency to misuse the provisions of the Consumer Protection Act in respect of matters not falling within its purview. The tendency must be discouraged; *Orissa Vegetable Oil Complex Ltd. v. State of Orissa*, 1994 (I) CPR 32.
- (iv) Cost can be saddled with only in case of fraudulent or vexatious complaints; *Vihol Jaswantsingh Shivaji v. The Asstt. Branch Manager, New India Insurance Co. Ltd.*, 1994 (I) CPR 417.

27. Penalties.— Where a trader or 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 for a term which shall be not less than one month but which may be extended 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: Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, or a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

CHAPTER IV

MISCELLANEOUS

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 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 hereunder.

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: Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made be laid before each House of Parliament.

29A. Vacancies or defects in appointment not 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.

30. Power to make rules.—

- (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 (vi) of sub-section (4) of section 13, section 19, sub-section (2) of section 20 and section 22 of this Act.
- (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], sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, sub-section (3) of section 14, section 15 and sub-section (2) of section 16.

31.Laying of rules.–

(1) Every rule made by the Central Government 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 both Houses agree that the rule should not be made, the rule 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.

(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.