

COMMENTARY ON THE CONSUMER PROTECTION ACT (4th ed., 2010). By J.N. Barowalia. Universal Law Publishing Co. Pvt. Ltd., C-FF-1.A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. xciv + 1454. Price: Rs. 1450/-.

RESOLVING DISPUTES IN TELECOMMUNICATIONS: GLOBAL PRACTICES AND CHALLENGES (2011) By R.U.S. Prasad. Oxford University Press, YIV1C.A Library Building (Behind Jai Singh Road) ew Delhi-110001. Pp. xviii + 197. Price: Rs. 595/-.

THE CONSUMER Protection Act, 1986 (CP Act) was enacted by Parliament recognizing certain rights to the consumers and providing a three-tier adjudicatory forum for the redressal of consumer grievances. It is a self-contained code, envisaging the establishment of consumer protection councils at the national, state and district levels to promote and protect the rights of consumers and providing for easily accessible and cheap remedy to the consumers by establishment of three-tier adjudicatory forums to redress consumers' grievances covered under the CP Act. The Act contains in-built hierarchy of the forums at the grass-root district level (district consumer disputes redressal forum), state level (state consumer disputes redressal commission) and the national level (national consumer disputes redressal commission). These forums consist of judicial as well as non-judicial members. Each of them is headed by a sitting or retired district judge in case of district forum, a high court judge in case of state commission and a Supreme Court judge in case of the national commission. The selection of members is through selection committees except in case of a high court or a Supreme Court judge who has to be appointed after consultation with the chief justice of the high court concerned or the Chief Justice of India, as the case may be. Each of these forums is multi-member with at least one lady in each of them.

The state commissions and national commission have very wide jurisdiction which include original, appellate and revisional jurisdiction. The original jurisdiction is based on monetary ceiling: district forum if the total amount of the claim does not exceed twenty lakh rupees; state commission if the total amount of claim is more than twenty lakh rupees and less than one crore of rupees and the national commission if the claim exceeds one crore of rupees. The appeal from the orders of the district forum can be filed to the state commission within thirty days of the date of the order or within the time extended by the state commission for reasons to be recorded in writing. Likewise, appeals from the orders of the state commission passed in exercise

of original jurisdiction can be filed before the national commission within thirty days of the date of the order or within the time extended by the national commission for reasons to be recorded in writing. The orders of the national commission passed in exercise of original jurisdiction are appealable to the Supreme Court. Noticeably, all orders of the district forum are appealable to the state commission. The CP Act does not contain any “grounds” on which appeals can be filed from one forum to the other. These forums have to follow the procedure broadly laid down under the CP Act and they are bound by the principles of natural justice. They have the power to pass *interim* orders in just and proper cases. The forums are enjoined with the powers of civil courts.

The CP Act confers revisional jurisdiction on the state commission as well as the national commission which is similar to the powers of the high courts under section 115 of the Code of Civil Procedure, 1908 and also the power of judicial review exercised by the high courts and the Supreme Court while considering a petition for the writ of prohibition or *certiorari*.¹ The state commission can exercise revisional powers in respect of consumer disputes pending or decided by the district forums while the national commission can do so in respect of consumer disputes pending or decided by the state commission.² This is an un-paralleled power given to any quasi-judicial body under a legislation.

A consumer complaint may relate to an unfair or restrictive trade practice, defects in good or deficiency in services, excess pricing or good being hazardous to life and safety. A complaint can be filed not only by the actual consumer but also a registered voluntary consumer association, government, one or more consumers in a representative capacity or the heirs of a deceased consumer. The services availed free of cost or under the contract of personal service or goods purchased for resale or commercial purpose (except when used for self-employment) cannot be the subject of a consumer dispute under the CP Act. The complaint must be filed with fee as prescribed within two years from the date when the cause of action arose except when the delay in filing the complaint is condoned.

The CP Act has generated huge volume of judicial pronouncements, some of which continue to cause un-certainty and un-predictability. The question whether, and, if so, to what extent, a doctor, a lawyer or an educational institution would be liable under the CP Act remains a matter of controversy.

1. See *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477; *Surya Dev Rai v. Ram Chander Rai*, AIR 2003 SC 3044.

2. See ss. 17(l)(b) and 21(b) of the CP Act. The grounds being: that the forum had exercised jurisdiction not vested in it by law or had failed to exercise jurisdiction vested in it or had acted illegally or with material irregularity in exercise of its jurisdiction.



Even though the Supreme Court has decided certain cases involving them, but the application of the *ratio* culled out from them keeps bogging the mind of the consumers as well as professionals when it comes to application of the *ratio* in a particular fact situation. The question of ‘negligence’ has always been, and perhaps, would always remain, alive and has necessarily to be decided by looking to the facts of the case in question.

The book³ written by J.N. Barowalia is a bulky commentary on the CP Act, giving section-wise detailed commentary with the help of cases decided by the courts as well as the consumer forums. The reader has not to go elsewhere in search of the relevant provisions pertaining to procedure and evidence which the consumer forums have to follow while adjudicating a consumer complaint. The author has given all the relevant provisions of the Code of Civil Procedure, 1908, Code of Criminal Procedure, 1973 and the Evidence Act, 1872, wherever necessary, particularly with reference to section 13 of the CP Act. One may, however, notice that the bulk of the book has unnecessarily been increased by reproducing the provisions of the CP Act in the commentary even though the same have already been produced fully when the commentary of a section begins.

The book contains 944 pages section-wise commentary on the CP Act and 478 pages include rules made by the central and state governments in exercise of powers under the CP Act along with the provisions of certain related legislation/rules like the Competition Act, 2002, the Monopolies and Restrictive Trade Practices Act, 1969 alongwith rules and the relevant Supreme Court Rules, 1966 dealing with appeals under section 23 of the CP Act; the J & K Consumer Protection Act, 1987, United Nations Guidelines for Consumer Protection and the UK Consumer Protection Act, 1987; eleven model forms which a complainant can use for filing complaint. The author has in a casual manner wrongly stated the rules made by the central government under the CP Act as “State Laws” (pp. 947-983). The book also contains a very detailed table of cases (60 pages), list of statutes (4 pages), list of approved laboratories(10 pages), list of consumer forums and commissions (33 pages), names and addresses of voluntary consumers organisations (51 pages) and a detailed subject index (30 pages). The information contained in these pages would be quite useful.

It is sad that the author has not taken enough care in revising his commentary in the light of amendments which has resulted in wrong statement of law, *e.g.* the author has stated that the CP Act “has not conferred any power on the Redressal Fora constituted under it to pass interim orders by way of

3. J.N. Barowalia, *Commentary on the Consumer Protection Act* (4th ed., 2010).

injunction, etc., pending original proceedings instituted before the Forum.”⁴ While making this observation, the author did not care to read the provision of sub-section (3B) of section 13 of the CP Act which expressly confers power on the district forum stating that, “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.”⁵ This power can also be exercised by the state commissions as well as the national commission.⁶ Even while giving his commentary on section 13 (pp. 598-682), the author has not touched the power of the consumer forums to pass interim orders as provided under section 13(3B) of the CP Act. Since the insertion of this new sub-section, the present edition of the book has undergone two revisions and it is not at all expected that such a blunder should exist in a book acclaimed by a former president of the national commission as a ‘treatise’ produced after extensive research. It is hoped that the author will take due care in up-dating the book while revising it next time to make it an authoritative commentary, before the readers/practitioners using it are misled on account of wrong statements or omissions of law.

The book by R.U.S. Prasad⁷ is the result of the author’s association with India’s Telecom Dispute Settlement and Appellate Tribunal (TDSAT) established by the central government in exercise of powers under section 14 of the Telecom Regulatory Authority of India Act, 1997. This is a small book containing 134 pages text and 53 pages with six appendices. The book also contains a detailed bibliography which would be very useful to the readers. The development of telecommunications since 1990s is influenced by global factors and technological developments. The author is right in stating that the issues of inter-connectivity, jurisdiction, fair treatment, spectrum management, quality standards, compatibility, interpretation of licensing terms, *etc.* have afflicted the telecom sector. The recent 2G spectrum scam has puzzled all in this country.⁸

The book is divided into eight chapters. The dispute resolution mechanism as prevalent in countries like United Kingdom, United States of America, Canada, Germany, France, Denmark, Australia and Malaysia have been briefly analysed by the author along with the Indian position. In India, the Telecom Regulatory Authority of India Act, 1997 contains elaborate adjudicatory

4. *Id.* at 834-35. In support of this view, the author has relied on cases decided by the state and national commissions between 1993 and 1995.

5. This provision was added by the Consumer Protection (Amendment) Act, 2002 w.e.f. 15.3.2003.

6. See the CP Act, ss. 18, 22 and 22A.

7. R.U.S. Prasad, *Resolving Disputes in Telecommunications: Global Practices and Challenges* (2011).

8. See *Centre for Public Interest Litigation v. Union of India*, 2010 (13) SCALE 501.

mechanism for adjudication of any dispute between a licensor and a licensee, two or more service providers or between a service provider and a group of consumers. The individual consumer disputes, however, are excluded under section 14(a)(iii)(B) from the jurisdiction of TDSAT. The grievances of individual consumers can be redressed under the Consumer Protection Act, 1986.

The author has devoted chapter 5 to a discussion of the policy and regulatory initiatives in India and their impact. The author, while emphasizing the good role assigned to, and played by, the TDSAT, has taken a critical view of the fact that it is “saddled with court-like procedures that make resolution of disputes an expensive and time consuming exercise.”⁹ Moreover, despite time limit of ninety days prescribed for the disposal of a case and the requirement of recording reasons for delay, the TDSAT follows only court-like procedure and the requirement of reasons is hardly observed. Unfortunately, this is true of all quasi-judicial bodies established under parliamentary legislation to adjudicate a large variety of cases. The annexure appended to this chapter contains a list of representative petitions before the TDSAT filed and/or disposed of during 2001-03, perhaps because during that time, the author was its member. This list indicates the nature of disputes and the outcome of adjudication by the TDSAT. The list should have been up-dated while publishing the book.

The dispute settlement mechanism includes not only judicial adjudication by the courts but also general judicial mediation, adjudication under specific statutes and alternative dispute resolution mechanism (ADR) such as negotiation, arbitration and mediation. Even the institution of ombudsman is also pressed into service in certain countries. The author has given a bird's eye view of the entire mechanism.

In the last chapter, the author has given certain useful recommendations based on his empirical work analysed in the book. The book contains six appendices. Appendix I contains the National Telecom Policy, 1994 while appendix II contains India's New Telecom Policy, 1999. Appendices III to V contain three cases decided by the TDSAT. The last appendix contains the Telecom Disputes Settlement & Appellate Tribunal Procedures.

The book gives a glimpse of the settlement mechanism which arouses a curiosity in the reader to read further. The book has been successful to this extent. The book would have been more useful had the author included some of the leading cases decided by the Supreme Court in this area, particularly those decided after the passing of the Act of 1997 and the establishment of the TDSAT, to indicate the extent to which the decisions of TDSAT have

9. *Supra* note 7 at 99.



been upheld or overruled.¹⁰ But whatever has been provided in the book is certainly very useful for the reader who can have an insight into the problems connected with telecom dispute settlement mechanism.

*S.N. Singh**

10. See, for instance, some cases decided under the 1997 Act: *BSNL v. Reliance Communication Ltd.*, 2010 (12) SCALE 586; *Tata Teleservices Ltd. v. BSNL* (2008) 10 SCC 556; *Reliance Infocomm Ltd. v. BSNL* (2008) 10 SCC 535; *Reliance Infocomm Ltd. v. BSNL* (2008) 10 SCC 535; *Bharat Sanchar Nigam Ltd. v. BPL Mobile Cellular Ltd.* (2008) 13 SCC 597; *Star India (P) Ltd. v. Sea TV Network Ltd.* (2007) 4 SCC 656; *Union of India v. Tata Teleservices (Maharashtra) Ltd.* (2007) 7 SCC 517; *Union of India v. Millenium Mumbai Broadcast (P) Ltd.* (2006) 10 SCC 510; *Star India (P) Ltd. (2) v. Sea TV Network Ltd.* (2006) 4 SCC 130; *Hotel & Restaurant Assn. v. Star India (P) Ltd.* (2006) 13 SCC 753; *Bharti Telenet Ltd. v. Union of India* (2005) 4 SCC 72; *Cellular Operators Assn. of India v. Union of India* (2004) 8 SCC 524; *Cellular Operator Assn. of India v. Union of India* (2003) 3 SCC 186; *Deptt. of Telecommunication v. Cellular Operators Assn. of India* (2003) 4 SCC 477.

*LL.M., Ph.D. Director, School of Legal Studies & Research, Noida International University.
E-mail: s_nsingh@hotmail.com.