

NOTES AND COMMENTS

CONSUMER PROTECTION LEGISLATION : A CRITIQUE

IN RECENT times, one of the most significant areas of economic regulation all over the world has been the adoption of consumer protection legislations in a big way. In India, many such laws have been enacted by Parliament to protect the interests of consumers since Independence,¹ but the most important is the Monopolies and Restrictive Trade Practices Act 1969. The Act was amended in 1984 on the recommendations of the Sachar Committee² with a view to control unfair trade practices which are harmful to the consumers.³

The month of December 1986 can legitimately be considered as Parliament's session for consumer protection when marathon race of legislative activity was undertaken to protect the interests of consumers. In just two days, both the Houses of Parliament passed seven amending legislations⁴ aimed primarily at empowering an aggrieved person or a recognised consumer association (whether the person aggrieved is a member of such association or not) to approach the prescribed authorities under the respective legislations for relief. This was earlier considered to be a serious lacuna, which was partly responsible for their ineffectiveness. Parliament also enacted another legislation, viz., the Bureau of Indian Standards Act 1986 to replace the Indian Standards Institution (Certification Marks) Act 1952 with a view to

1. See, e.g., the Drugs Control Act 1950, Industries (Development and Regulation) Act 1951, Indian Standards Institution (Certification Marks) Act 1952 (since repealed), Drugs and Magic Remedies (Objectionable Advertisements) Act 1954, Prevention of Food Adulteration Act 1954, Essential Commodities Act 1955, Trade and Merchandise Marks Act 1958, Hire Purchase Act 1972, Cigarettes (Regulation of Production, Supply and Distribution) Act 1975, Standards of Weights and Measures Act 1976, Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act 1980, Essential Commodities (Special Provisions) Act 1981, Multi-State Co-operative Societies Act 1984, Standards of Weights and Measures (Enforcement) Act 1985 and Narcotic Drugs and Psychotropic Substances Act 1985. Some significant consumer protection enactments of pre-Independence time are: the Sale of Goods Act 1930, Agricultural Produce (Grading and Marking) Act 1937 and Drugs and Cosmetics Act 1940.

2. See *Report of the High-Powered Expert Committee on Companies and MRTP Acts*, paras. 21.32—21.33 at 270-72 (1978).

3. The Monopolies and Restrictive Trade Practices (Amendment) Act 1984 inserted sections 36A to 36E in the original Act of 1969, which deal with unfair trade practices.

4. The Monopolies and Restrictive Trade Practices (Amendment) Act 1986, Prevention of Food Adulteration (Amendment) Act 1986, Drugs and Cosmetics (Amendment) Act 1986, Standards of Weights and Measures (Enforcement) Amendment Act 1986, Standards of Weights and Measures (Amendment) Act 1986, Essential Commodities (Second Amendment) Act 1986 and Agricultural Produce (Grading and Marking) Amendment Act 1986. All were assented to by the President on 24-25 December 1986.

provide for the establishment of a bureau of Indian standards for harmonious development of the activities of standardisation, marking and quality certification of goods.

Parliament further enacted an altogether new legislation, *viz.*, the Consumer Protection Act 1986⁵ to provide for better protection of the interests of consumers and to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes. The Act is applicable to all goods⁶ and services.⁷ The term "consumer" has been defined under section 2(1)(d) to mean any person who buys goods or hires any service for consideration, paid or promised, and includes user of goods using them with the approval of buyer but does not include a person who obtains goods for resale or for any other commercial purpose. The term "person" includes a firm, registered or not, a Hindu undivided family, a co-operative society and every other association of persons whether registered under the Societies Registration Act 1860 or not.

One salient feature of the Act, which is certainly an improvement over other consumer protection legislations, is that it is applicable even to enterprises in the public sector, financial institutions and co-operative societies. This widens the scope of this Act as compared to others. Moreover, its provisions are in addition to, and not in derogation of, the provisions of other laws.

The Act seeks to provide for the establishment of advisory as well as adjudicatory bodies, both at the central and state levels. The Central Government may establish the Central Consumer Protection Council consisting of the minister in charge of the Department of Food and Civil Supplies of the Government of India as its chairman and such number of other official and non-official members representing such interests as may be prescribed. The council is to perform an advisory role to promote and protect the rights of consumers, such as the right to be informed about the quality, quantity, potency, purity, standard and price of goods; right to be assured access to a

5. In England, the Consumer Protection Act 1987 has been enacted to deal with product liability, general safety requirement and misleading price indications. See, for a comment on this legislation, Alistair Clark, "The Consumer Protection Act, 1987," 50 *Mod. L. Rev.* 614 (1987); Kathleen Gardwell, "The Consumer Protection Act, 1987 : Enforcement of Provision Governing the Safety of Consumer Goods," *id.* 622.

6. The word "goods" has been assigned the same meaning as given to it under section 2(7) of the Sale of Goods Act 1930 which provides "Goods" means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

7. The word "service" has been defined in a comprehensive manner under section 2(1)(o) of the Act to mean service of any description which is made available to potential users except those rendered free of charge or under a contract of personal service. It also includes facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information.

variety of goods at competitive prices; right to be heard at appropriate forums; right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and right to consumer education. On the same pattern and with the same objective, a consumer protection council at the state level is also envisaged.

The Act provides for the establishment of adjudicatory bodies at three different levels—district, state and national. At the bottom, there is the consumer disputes redressal forum (district forum) in every district to be established by the state government with the prior approval of the Central Government. It shall consist of a president who is, or has been, or is qualified to be a district judge to be nominated by the state government and two members—a person of eminence in the field of education, trade or commerce and a lady social worker. The members hold office for a term of five years or up to the age of 65 years, whichever is earlier, and they are not eligible for reappointment.

The district forum has jurisdiction to entertain complaints where the amount or value of goods or services and the compensation, if any, claimed is less than rupees one *lakh*. A complaint could be filed by a consumer, any voluntary consumer association, registered under the Companies Act 1956 or any other law, or the Central or any state government. It may relate to any allegation that the complainant suffered loss or damage as a result of any unfair trade practice;⁸ that the goods suffered from any defect—fault, imperfection or shortcoming in the quality, quantity, purity or prescribed standard; that the services rendered suffered from any deficiency—any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance; or that more than fixed or displayed prices were charged for the goods. The forum has to decide a complaint after hearing the parties and, if necessary, after seeking a report from the appropriate laboratory about defects in goods. The proceedings before the forum are judicial proceedings and it is vested with the powers of a civil court in various matters concerning its procedure in the disposal of complaints. The district forum has power to issue order to the opposite party to remove the defect, to replace the goods, to return the price or other charges and/or to pay compensation to the consumer for the loss or injury suffered by him due to the negligence of the opposite party. The order of the forum is appealable to the State Consumer Disputes Redressal Commission (state commission) within 30 days from the date of the order. One objectionable provision about the procedure of the forum is contained in section 13(3) which provides that if the prescribed procedure has been followed, its proceedings shall not be called in question in any court on the ground that the principles of natural justice have not been complied with. It is submitted that this kind of privative clause cannot

8. The term "unfair trade practices" has been assigned the same meaning as given in section 36A of the *Monopolies and Restrictive Trade Practices Act 1969* except the unfair trade practices adopted by the owner of an undertaking covered under section 20 of that Act or any other person acting on behalf of or for the benefit of such owner.

oust judicial review because the procedure prescribed may not be appropriate to ensure justice in a case.

The next adjudicatory body in the hierarchy is the state commission which, in addition to appellate jurisdiction against the orders of district forum, has original jurisdiction to entertain complaints where the value of goods or services and compensation, if any, exceeds rupees one *lakh* but does not exceed rupees 10 *lakh*. The commission shall consist of a person as its president, who is, or has been, a judge of a High Court, appointed by the state government, and two other members who shall be persons of ability, integrity and standing having knowledge, experience or capability in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the two members has to be a woman. If a sitting High Court judge is to be appointed as president, prior consultation with the Chief Justice of the High Court is essential. The power to pass orders and the procedure of the commission will be the same as that of the district forum. Its order passed in exercise of the original jurisdiction is appealable to the National Consumer Disputes Redressal Commission (national commission) within 30 days of the order. One significant provision of the Act is section 17(b) which confers power on the state commission to correct jurisdictional errors committed by district forum, *viz.*, failure to exercise jurisdiction, exercising jurisdiction not vested in it or acting illegally or with material irregularity in exercise of its jurisdiction. The illegality or irregularity may arise when the district forum decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the complaint is opposed to the principles of natural justice. This power is, strictly speaking, a power of judicial review conferred on the High Courts under article 226 of the Constitution to issue a writ of *certiorari* to correct errors of law and jurisdiction committed by lower courts and tribunals. The state commission can exercise this jurisdiction in respect of a complaint, whether pending or finally disposed of. This power, however, does not entitle it to correct findings of fact arrived at by the district forum.⁹

On the top of the adjudicatory set up is the national commission vested with appellate jurisdiction against the orders of the state commission and original jurisdiction in respect of complaints where the value of goods or services and compensation, if any, exceeds rupees ten *lakh*. It is vested with power of judicial review in the same manner as vested with state commission in respect of a dispute pending or disposed of by it. The national commission consists of a person as its president, who is, or has been, a judge of the Supreme Court, to be appointed by the Central Government, and four other members who shall be persons of ability, integrity and standing, having adequate knowledge, experience or capability in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs

9. See *Syed Yakoob v. K.S. Radhakrishnan*, A.I.R. 1964 S.C. 477.

or administration. One of the members must be a woman. If a sitting judge of the Supreme Court is proposed to be appointed as president, prior consultation with the Chief Justice of India is mandatory. The national commission is vested with powers of a civil court on the same pattern as the district forum.

An order of the national commission, in exercise of its original jurisdiction, is appealable to the Supreme Court within 30 days of its passing. The court may, however, entertain an appeal even after 30 days if it is satisfied that sufficient cause is shown for not filing the appeal within prescribed time. It may be mentioned that the appeal is expected to be only against the final orders of the commission disposing of the case and not against the interim orders. Except for the provisions of appeal, the orders of the district forum and state and national commissions have been given finality. Unfortunately, the grounds on which appeal could be filed to the state and national commissions or the Supreme Court have not been mentioned. It is, therefore, expected that an appeal would be a routine one on all available grounds. This sort of liberty does not seem justified. At least for filing appeal to the Supreme Court, grounds such as those which are covered under section 55 of the Monopolies and Restrictive Trade Practices Act could and should have been mentioned.

The orders of the district forum and state and national commissions are enforceable by them in the same manner as a decree or order of a court; in case of their failure to enforce the order, the same may be sent to the court of competent jurisdiction for enforcement. A person or trader who fails or omits to comply with the order is punishable by the district forum or state or national commission for a minimum term of one month which may extend up to three years or with a minimum fine of Rs. 2,000 which may extend up to Rs. 10,000 or with both. Lesser than the minimum imprisonment or fine may be imposed if the circumstances of a case so require. The frivolous or vexatious complaints may be dismissed without any further proceedings. Protection from any suit, prosecution or other legal proceeding has been given to the members of the district forum and state and national commissions and their officers or other persons acting under their direction for executing any order or for anything done under the Act or the rules in good faith.

In the area of delegated legislation, in exercise of Henry VIII Clause, the Central Government has been given power to make provision, by issuing order in the official gazette, for giving effect to the provisions of the Act if any difficulty arises. The order, however, should not be inconsistent with the provisions and the power must be exercised only within two years from the commencement of the Act. This time limit is a good check on the exercise of power under the otherwise uncherished clause.¹⁰ Both the Central

10. Reference may be made to the *Report of the Committee on Ministers' Powers* 36-37, 59-61 (Cmd. 4060, 1932).

and state governments have been given rule making powers in their respective jurisdictions. The rules are required to be published in the official gazette and laid before Parliament and state legislatures when made by Central and state governments respectively.

The Act seems to have been enacted in a great hurry. This is why many significant aspects have not been covered or foreseen. Thus there is no provision for giving interim relief or issuing interim injunction which may be necessary in some cases. There should also have been provision for specific performance of a contract because of which a consumer is likely to suffer loss or damage. There is no provision for appointment of acting president in case of a temporary vacancy because of illness or otherwise of the president. A provision should be made for the appointment of the seniormost member to be acting president.

It is unlikely that a sitting judge of the High Court or Supreme Court would be willing to accept presidentship of the state or national commission because it cannot be considered to be equal to the status of a judge. Further, there would hardly be any difference in the age of retirement of a judge and president, and, therefore, no retired judge would be available to man the commissions. A provision should be made in the Act that a person who is qualified to be appointed as a judge of the High Court or Supreme Court can be appointed president of the state or national commission, as the case may be.

The independent full-fledged adjudicatory set up provided by the Act is no doubt welcome but it may create jurisdictional problems because of overlapping. Almost all the aspects of sale of goods would also be covered under the Sale of Goods Act 1930 and, therefore, falling within the jurisdiction of the civil courts which have power to give declaratory, compensatory and injunctive relief. Most of these aspects would also fall within the purview of the Contract Act 1872. The control of unfair trade practices is an area entrusted to the Monopolies and Restrictive Trade Practices Commission under sections 36A to 36E of the 1969 Act. Though the High Courts have not been assigned any role under the Act, they enjoy their constitutional powers under articles 226 and 227 which have not been ousted. These courts would, therefore, exercise their powers whenever called upon to do so. This would frustrate the very purpose of not assigning them any role under the Act. Besides, a large number of administrative and quasi-judicial bodies have been established under a large number of consumer protection legislations to exercise powers in many areas which would also fall within the purview of the present Act. Efforts should be made to harmonise the functioning of all these courts and authorities so that one does not hinder the functioning of the other so as to harm the consumer instead of protecting him.

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