6
CONSUMER PROTECTION LAW

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I INTRODUCTION

ALL OF us are consumers, either of goods or services. Consumer protection law covers practically all aspects and activities of human life which explains its vastness. Keeping in view the constraints of space this survey has been confined mainly to the two more important aspects of consumer protection law, namely, insurance and housing, which are fairly representative of the emerging trends in the development of this branch of law. In fact much of the space in consumer fora, at all levels, has been occupied by the insurance cases. Hence their pre-dominance in the consumer protection law journals. Attempt has been made to highlight all aspects of the working of the consumer fora, the problems faced by them, and their strengths and weaknesses in the various cases analysed in this survey.

II INSURANCE

Exclusionary clause

In *United India Insurance Co. Ltd.* v. *Kiran Combers & Spinners*,[1] the Supreme Court had the occasion to examine the scope of exclusionary clause in an insurance policy. The complainants/claimants in this case had got their building and stocks insured from the United India Insurance Company Ltd. It held a valid fire policy for its stocks, including building, machinery, furniture and fixtures effective from 11.1.1993 to 10.1.1994. This policy was also endorsed to cover risk of floods. On account of heavy rains and floods in the city on 24.7.1993 the insured property was affected by floods, which caused damage to building, machinery and stocks.

FIR was lodged and incident was reported to the insurance company. The complainants claimed Rs.20,03,842/- as compensation. The insurance company appointed a surveyor who conducted a preliminary survey and submitted his report. A second surveyor also visited the premises and submitted his report on 14.9.1993 assessing the loss at Rs.10,13,571.90. However, he recommended that the insurer carried no responsibility in this

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1 2005 CTJ 105 (SC).

case as building collapsed on account of structural defects caused by the subsidence which was not covered by the policy. So, the claim of the insured was repudiated basing on the report of the second surveyor. Therefore, the insured filed a consumer complaint before the National Commission claiming damages as aforesaid. This claim was contested by the insurance company on the basis of the report of the second surveyor and their plea was that the loss and damage caused to the building was due to structural defect in column no. 3 of the building and that it was a case of subsidence, which was not insured by the company. This plea was rejected by the National Commission, which came to the conclusion that repudiation of the claim by the insurance company was not warranted and so it decreed the claim of the complainant to the extent of Rs.10,13,571.90 as assessed by the second surveyor. Aggrieved by this order, appeal was filed by the insurance company before the Supreme Court.

As stated by the Supreme Court, it was the admitted position of the parties that the complainant was covered from 11.1.1993 to 10.1.1994 and the flood had taken place on 24.7.1993 which caused extensive damage to the building. Since the fire policy was also covered for flood, storm, and tempest on payment of extra 20% premium, so the court ruled that there was no dispute that the incident had taken place during the coverage of the policy and the cause of damage was flooding of water into the building. The court noted that the basic submission addressed by the counsel for the insurance company was that it had not covered 'subsidence'. It noticed that subsidence means "gradual caving in or sinking of an area of land." On account of water flooding into the premises of the complainant from Kohinoor Woollen Mills, the land caved in as a result of which one column of the building collapsed. So the court posed question whether subsidence was covered in the policy or not. For deciding this question, the court made reference to the exclusionary clause 8 of the policy, relevant portion of which is reproduced as under:-

> 8. Any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrence namely,
> a) ...
> b) Typhoon, storm, cyclone, tempest, Hurricane, Tornado, Flood and Inundation....
> In any action, suit or other proceedings where the Company alleges that the reason of the provision of the above Exclusions any loss or damage is not covered by this Insurance, the burden of proving that such loss or damage is covered shall be upon the insured.

The court noted that perusal of the aforesaid clause clearly shows that there was no exclusion clause for subsidence. It noted that clause 8 (b) reproduced above, *inter-alia*, talks of typhoon, storm, cyclone, tempest, hurricane, tornado, flood and inundation and none of the events mentioned therein included subsidence. Therefore, the court expressed its surprise as to how the surveyor had brought in an expression of 'subsidence' although

clause 8 does not mention anything like subsidence. So, the court concluded that on the ground of subsidence, the repudiation was not justified. Adverting to the next question of collapse of the building on account of alleged poor construction of column no.3 of the building the court noted that in fact the insurance company itself had certified that the building had first class construction. The court, therefore, ruled that if some defect, which had not been noticed by the company at the time of its inspection of the building before issuing the insurance policy, no benefit for such defect could be given to the insurance company. The court noted that even if the building had collapsed because of defective structure of column no.3, the question was what aggravated or accentuated this. The factory had been in place for more than 12 years and it was on account of flood water entering the factory that damage had been caused. So, had this not happened perhaps the construction which stood good for 12 years, would have lasted long. The court accordingly held that the cause of the damage to column no.3 of the building was due to flood water entering the building and therefore, the company could not escape its liability. Thus, concurring with the order of the National Commission, the appeal was dismissed.

This judgment highlights two important points: firstly, that the exclusionary clause has to be strictly construed; and secondly, if at the time of issuing insurance policy the insurance company inspects and certifies the building or the subject of insurance to be in sound condition, subsequently after the event it cannot be allowed to plead any defect in it which it had not mentioned at the time of issuing the insurance policy. Both these points emerging from the instant decision of the apex court are consumer friendly and would certainly stand in the way of genuine claims being defeated by the insurance companies on flimsy grounds invented as afterthoughts.

National Insurance Company v. *Ishar Dass Madan Lal*,[2] presented another type of exclusionary clause for adjudication. In this case, the complainant, a jeweller, obtained an insurance policy known as 'Jeweller Block Policy' from the insurance company. A theft of 140 grams of jewellery occurred in his business premises. A customer was shown the jewellery for selection but he walked away with it. FIR was lodged. The insured also lodged a claim with the insurance company, which was not settled for a long time. Therefore, he filed a consumer complaint before the state consumer disputes redressal commission. The question raised before the state commission was whether the claim was covered under the insurance policy. As usual, the insurance company contended that the claim was covered by exclusionary clause no.8 (contained in the policy) which reads as under:-

> 8. Loss or damage occasioned by theft or dishonesty or any attempt thereat committed by or where such loss or damage has been expedited or in any way sustained or brought about by:

2 2007 CTJ 338 (SC).

a) any of the insured's family members;
b) any servant or traveller or messenger in the exclusive employment of the insured;
c) any customer or broker or their customer or angadias or cutters or goldsmiths in respect of the property hereby insured entrusted to them by the insured, his or their servants or agents.

The commission by its order dated 16.12.1997 found the claim to be not sustainable on the ground that it was covered by the exclusionary clause. On appeal, the High Court of J&K reversed the said order and concluded that the case was not covered under the exclusionary clause. In appeal to the Supreme Court the short question for consideration was whether clause 8 was applicable to the facts and circumstances of this case. The court ruled that whenever there is an exclusionary clause, it would be for the insurer to show that the case fell within the purview thereof and that in case of ambiguity the contract of insurance should be construed in favour of the insured. The Supreme Court observed that the word 'customer' contained in clause 8 (c) of the insurance policy must be read *ejusem generis* with broker, *angadias*, cutter or goldsmith. A customer contemplated in the exclusion clause is to be a man of trust and if the customer is not a man of trust and the property was given to him for inspection, then there would be no 'entrustment' to him and so the exclusion clause would not apply. Since the customer in this case was unknown to the insured, so, there could be no entrustment to him. Consequently, concurring with the judgment of the high court, the appeal was dismissed by the Supreme Court.

In *New India Assurance Co.* v. *Prabhu Lal*,[3] the complaint was that one Mohd. Julfikar, who was holding a valid driving licence for driving a transport vehicle, was driving the vehicle in question at the time of accident. Ram Narain, brother of the owner/complainant, was also travelling with Julfikar in that vehicle. As a result of this accident Ram Narain sustained injuries, but Julfikar apprehending violence and retribution from the victims and their supporters ran away from the place of occurrence. Immediately after the accident the complainant lodged an FIR and preferred his claim with the insurance company. When he was not paid, he filed a consumer complaint before the district forum claiming compensation for the damage to his vehicle, for mental agony and cost of driving the vehicle from the place of accident to the workshop for repair and survey fee. In defence the insurance company pleaded that at the time of the accident the offending transport vehicle was being driven by Ram Narain aforesaid, who held a valid driving licence only for driving an LMV and not a transport vehicle and therefore the owner of the vehicle (complainant) had committed breach of the material term of the insurance policy and hence it was not liable to pay. On the basis of material on record, the district forum found that Ram Narain was driving

3 2008 CTJ 1 (SC) (Decided on 30.11.2007).

the transport vehicle at the time of accident, and hence in view of the rule laid down in *Ashok Gangadhar*[4] the insurance company was not liable. Therefore, the claim of the complainant was dismissed. On appeal, the state commission took the view that in fact the holding in *Ashok Gangadhar* supported the owner of the vehicle, and hence it reversed the order of the district forum and decreed the complaint in favour of the complainant, owner of the vehicle. On revision this order was upheld by the National Commission.

In view of the conflicting interpretations being placed on *Ashok Gangadhar,* the Supreme Court took special care to elaborate the facts of that case, the principles laid down in it and the facts and circumstances in which that case was decided. In para 32 of its judgment in *Prabhu Lal*, the court reiterated that *Ashok Gangadhar* did not lay down that the driver holding driving licence to drive light motor vehicle could also drive heavy motor vehicle. With a view to clarify the decision in *Ashok Gangadhar*, the court stated that that case was decided based on the peculiar facts and circumstances obtaining therein. It pointed out that the insurance company in that case neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the transport authority and so it was held liable. In other words, what was held on facts in *Gangadhar* was that the offending vehicle itself was not proved to be a transport vehicle, (so it was taken to be a light motor vehicle by the Supreme Court) and since its driver was holding a driving licence for LMV so the insurance company was held liable. After having elaborated and reiterated the correct principle of law laid down in *Ashok Gangadhar* that a person holding a LMV licence was legally not entitled to drive a transport vehicle or goods carrier, the court in the instant case held that Ram Narain who was proved to be driving the vehicle at the time of the accident was holding driving licence only for LMV, so he could not drive a transport vehicle. Hence the appeal of the insurance company was allowed and the complaint was dismissed.

The students of consumer law had been feeling for sometime that the judgment in *Ashok Gangadhar* required elaboration and clarification. It is gratifying that at long last, the elaboration/clarification has come from the apex court.

Third party claims

Another important case relating to insurance law reported in the year under survey is *National Insurance Company* v. *Laxmi Narain Dhut*.[5] The question posed in this case was whether the principles laid down in *National Insurance Co.Ltd.* v. *Swaran Singh*,[6] were applicable even to the claims

4. The principle laid down in *Ashok Gangadhar* v. *National Insurance Co.* , 1977 CTJ 635 (SC) was that if a driver was having effective driving licence to ply light motor vehicle (LMV), he could not have plied heavy motor vehicle (HMV) or transport vehicle.
5 2007 CTJ 445 (SC).
6 2004 (3) SCC 297.

other than the third party claims. It appears that after the judgment in *Swaran Singh*, some high courts and the National Commission started disposing of the insurance cases on the premise that the principles laid down in *Swaran Singh* were also applicable to the cases other than those of third party claims. While examining the rival arguments of the parties in *Laxmi Narain Dhut* the apex court, *inter alia*, observed that in *Swaran Singh* it had dealt with the scope and ambit of sections 147 and 149 of the Motor Vehicles Act, 1988 and after tracing the history of compulsory insurance and rights of the third party had held that any condition in the policy whereby right of third party was taken away was void. The court also examined the logic behind section 149 of the Act and reiterated that the context under the said provision only related to third party risks and claims. It noted that the Indian law on motor vehicle insurance had its origin in the English law and that the motor insurance law in England had its foundations in the Third Party Rights Against Insurers Act, 1930. After examining some English case law including *Harrington Motors Co. ex parte Chaplin*[7] and *Hoods Trustees* v. *Southern Union General Insurance Co. of Australia*[8] the court observed that the Third Party Rights Against Insurers Act, appears to have been enacted to set right anomalies in the English law. It was provided in the said Act that where the insured was insured against the third party risk, then in the event of his being made bankrupt, his rights against the insurers, notwithstanding anything in any Act or rules to the contrary, are transferred and vest in the third party to whom the liability has been incurred. The court considered the provisions of sections 147, 149, 155, 156, 157 and 165 of the Motor Vehicles Act, and concluded that the underlying purpose of these sections was to protect the third party interests. The court reiterated that on the analysis of the statutory provisions one thing is crystal clear – that the statute is beneficial only qua the third party, but that benefit cannot be extended to the owner of the offending vehicle.

The counsel for the insurers had argued at one stage that purposive interpretation should be placed on section 149 of the Act. The court, however, observed that the interpretation must depend upon both text and context. Relying on both the textual and contextual interpretation of section 149, the court repelled the contention of the counsel for the insurer and held that concept of purposive interpretation had no application to the case relating to section 149 of the Act.

Relating to the renewal of fake licence, the court relying on *New India Assurance Co. Ltd.* v. *Kamla and others*[9] reiterated that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without authority knowing it to be forged and that no licensing authority can renew a fake licence. Renewal, if at all made,

7 1928 Ch. 105 (CA).
8 1928 Ch. 793.
9 2001 (4) SCC 342.

cannot transform a fake licence into a genuine one. The court, accordingly, held that the decision in *Swaran Singh* has got no application to the own damage cases. In conclusion it laid down the following prepositions: (a) The decision in *Swaran Singh* has no application to cases other than third party risks; (b) where originally the licence was a fake one, renewal cannot cure the inherent fatality; (c) in case of third party risks the insurer has to indemnify the amount and if so advised recover the same from the insured; (d) the concept of purposive interpretation has no application to a case relatable to section 149 of the Act.

Laxmi Narain Dhut has certainly made the holding in *Swaran Singh* more explicit and clear, thus preventing many unscrupulous motor vehicle owners from claiming compensation for own damage, even when the person driving the vehicle was holding a fake licence and for this reason they were not entitled to compensation.

The principles laid down in *Laxmi Naryan Dhut* have been reiterated and followed in *Oriental Insurance Company* v. *Meena Variyal and Others*[10] and *United India Insurance Company Ltd.* v. *Davinder Singh*.[11]

Extended coverage

The scope of "storage risk" and "transit risk" was examined by the apex court in *United India Insurance Company* v. *Great Eastern Shipping Co. Ltd*.[12]

The complainant, Great Eastern Shipping Co. Ltd. had imported 12000 metric tons of sugar from China to Calcutta for which it had taken an insurance policy. Cover note dated 9.6.1994 and the policy valid from 23.9.1994 were issued. The policy was further extended by endorsement dated 28.9.1994 for up-country destination in India. After taking delivery of sugar, the bags could not be transported from the dock area because of Durga Puja celebrations. Therefore, in all 82,237 bags of sugar were temporarily stored in T-sheds at Calcutta port area en-route up-country destinations. On 21.10.1994 fire broke out in the godown and destroyed the entire stock of sugar bags. The appellant, insurance company, appointed a surveyor and additional surveyor, but the claim was not settled. Therefore, the complainant - respondent filed the consumer complaint before the National Commission on 21.3.1996. The plea of the insurance company repudiating the claim was that the goods were destroyed in general storage and not in the ordinary course of transit and what was covered was 'transit risk' and not 'storage risk'. Therefore, the claim was not entertainable. The National Commission rejected the defence of the insurance company and decreed the claim. Hence appeal by the insurance company to the Supreme Court.

The counsel for the respondent-claimant submitted before the court that when the coverage stood extended on the same terms and conditions and it

10 2007 (5) 269 (SC).
11 2008 CTJ 11 (SC) Decided on 12.10.2007.
12 2007 CTJ 901 (SC).

was clearly mentioned that it would cover any part of the Indian Republic that meant that the goods in storage and transit from Calcutta port to any part of destination was also covered. The policy had the same terms and conditions alongwith original marine policy and so it would cover the goods till they reached the destination in any part of the country. On the other hand, counsel for the insurance company urged and took the Supreme Court through the Marine Insurance Act, 1963 and tried to impress upon it that as per the terms and conditions of the policy once the goods reached the destination, i.e. Calcutta port, the policy stood discharged and the extended coverage did not cover the storage but the goods in transit till they reached any part of the country. After considering the true construction of the terms and conditions of the insurance policy and the submission of the counsel for the parties, the court observed that in the present case it is apparent on reading the institute cargo clause and the coverage terms and also the extended coverage terms that the intention that appears from these terms and conditions was that the goods were first covered from the port in China to destination in Calcutta port and thereafter extended coverage to 'any part of the Republic of India'. If these two terms of the policy are read in conjunction then it clearly transpires that the goods are covered till they reach the destination in any part of India. The court held that in fact the standard coverage was only meant for goods to be covered till they reach destination either by rail or road in any part of the country and that if the extended cover was not interpreted in this manner then the extended coverage on payment of higher premium would be meaningless. Resultantly, the appeal of the insurance company was dismissed.

The principle laid down and reiterated in this case is that while interpreting the insurance policy the court should keep in mind the intention of the parties as well as the words used and that if the intention of the parties subserves the expression used therein it should be given its full extended meaning. This is no doubt a well settled principle of interpretation of insurance policies.

III HOUSING

During the year under survey, an important case covering the housing and real estate business relating to the consumer protection law has been decided by the apex court in *Bangalore Development Authority* v. *Syndicate Bank*.[13] The main questions which fell for determination in this case, *inter alia*, were: (i) under what circumstances and to what extent a consumer who has been delivered possession of the house/flat/plot with delay (and who has accepted the same) was entitled to claim interest on the amount deposited by him; and (ii) whether he was entitled to compensation. Shorn of unnecessary details the facts of this case were that Syndicate Bank

13 2007 CTJ 689 (SC).

(hereinafter the complainant) had made an application under the self financing housing scheme for allotment of 250 flats/houses i.e. 15 HIG houses, 110 MIG units and 125 LIG units to the Bangalore Development Authority (BDA). The authority registered the request for allotment of 15 HIG houses *vide* its allotment letter dated 20.8.1984. The case which ultimately reached the Supreme Court related to the HIG houses only. BDA fixed tentative price of a HIG house at Rs.2,85,000/- which was subsequently revised to Rs.4,75,000/- per unit. The complainant had withdrawn its demand of 125 LIG units so the refund of their price was adjusted in the price of 15 HIG houses. BDA also informed the complainant that the units would be ready for occupation in the year 1986. The authority delivered the possession of four HIG houses in December, 1989 and May, 1990. Completion of construction and delivery of remaining 11 HIG houses was delayed. The complainant by its letters dated 29.11.1989, 17.1.1990 and 9.7.1993 and 11.1.1994 pointed out the delay in the delivery of possession of these houses and requested for early delivery of possession. It also demanded interest on the price paid at the bank rate till the date of delivery of possession apart from the reimbursement of the losses incurred on account of non-delivery. When the officers of the respondent met the officers of the authority personally to inquire about the 11 houses, they were informed that the delay was on account of raising a dispute and stopping the work in respect of part of the project by the contractor and assured that possession will be delivered immediately after completion. The complainant issued a final notice dated 11.7.1994 demanding performance within one month. This was not complied with. On this the bank filed a consumer complaint before the National Commission.

After perusing the evidence produced and the arguments advanced by counsel for the parties, the National Commission, *inter alia*, ruled that although the BDA had promised to deliver the possession by December, 1986, and full payment had been made by the respondent, 11 houses were not delivered to it till the complaint was filed in the year 1995. Holding that there was deficiency in service on the part of the BDA and that it had not given any satisfactory explanation for the delay the National Commission directed the BDA to pay interest @ 18% per annum on the amount of Rs.53,00,000/- (the approximate price of 11 HIG houses) commencing from the expiry of two years after the deposit of last instalment up to the date of possession. This order was challenged in appeal before the Supreme Court.

Coming directly to the question whether the complainant was entitled to the interest the court noticed that there was some vagueness in the order of the commission about the date of payment of Rs.53,00,000/-. From the material on record it noted that this amount had been in fact adjusted on 15.5.1989 from the refund of the price of 125 LIG houses, order for which had been withdrawn by the complainant. The court ruled that there was no basis in the findings recorded by the National Commission that the BDA had agreed to deliver houses by December, 1986 or that no reason was shown by the BDA for delay in delivery. The court held that where the grievance was

one of delay in delivery of possession and the development authority delivered the houses during the pendency of the complaint at the agreed price and such delivery was accepted by the allottee-complainant, the question of awarding any interest on the price paid by him from the date of deposit to date of delivery of possession did not arise. Taking a realistic view of the situation, the court observed that the allottee who had the benefit of appreciation of the price of the house was not entitled to interest on the price paid. In this case, the houses were delivered in 1997 at the price agreed upon in 1982/1985. In this view of the matter the Supreme Court held that the order of the National Commission awarding interest @ 18% per annum on the price of the house was unsustainable and liable to be set-aside.

Coming to the question of compensation, the court observed that the complainant could be entitled to compensation on account of delayed possession if he was able to prove the loss in rental income which the houses would have fetched if possession had been delivered in time. Alternatively, the loss can be assessed in terms of the rent paid by the respondent for the houses taken on lease due to non-availability of the allotted houses. However, the complainant had led no reliable evidence on this point and hence the court held that it was not entitled to compensation for loss caused to it on account of delay in delivery of possession.

The other related question in the instant case was whether the facts and circumstances warranted a finding of negligence and deficiency in service on the part of the BDA necessitating award of compensation. From the material on record the court could not find any negligence or deficiency on the part of the BDA which warranted award of compensation. Even otherwise the bank itself was a defaulter because it had not paid the self financing instalments. The BDA had also informed the complainant bank that the work had been delayed on account of its contractor stopping work and raising a dispute. BDA took necessary steps and even cancelled the contract with that contractor and got the work completed by an alternative agency and immediately after completion delivered the possession in the month of January/March, 1997. So, the BDA had been able to give a reasonable explanation for delay. The court also noted that both the parties had proceeded on the basis that time was not the essence of the contract and that even the complainant did not choose to terminate the contract obviously in view of the manifold increase in the value of houses which were being constructed by BDA at "no profit no loss basis" by using the instalments paid by the allottees. By the time of delivery, the value of houses had gone up manifold and so the complainant had the benefit of such increase in value. Thus, there was no deficiency in service.

The principles laid down by the court in this case relating to the payment of compensation and interest in cases of delay in handing over possession of flats/houses is nearer to the ground realities of the real estate business and is a welcome development. The court has also put on alert the consumer under "Self financing scheme", who do not pay instalments in time and later raise a hue and cry when there is delay in construction.

Under the rubric housing/construction, *Bhandari Construction Company* v. *Narain Gopal Upadhayay*[14] needs to be noted for its peculiar circumstances and observations made by the Supreme Court. The case of the complainant was that the initially agreed sale consideration for an office room was Rs.9,00,000/- for which he had delivered two cheques to the construction company. A few days thereafter the company returned the cheques to him and instead got executed an agreement for sale for a consideration of Rs.7,75,000/-. On that day he paid Rs.5,00,000/- by cheque as part of sale consideration and the company received Rs.4,00,000/- from him in cash. Despite that the possession of office room was not delivered to him. He filed a consumer complaint. It appears that he had caused some confusion in his pleadings and evidence. His complaint was dismissed by the district forum. However, the state commission accepting his version to be correct decreed the case, which was upheld by the National Commission observing that the builders were known to insist on receiving a part of the sale consideration in cash. However, on appeal, the Supreme Court relying on the written agreement of sale for Rs.7,75,000/- reversed the orders of the National Commission and state commission and restored that of the district forum. The court observed that a mere suspicion that the builders/ construction companies are prone to take a part of sale amount in cash is no ground to accept the story of payment of Rs.4,00,000/- in cash. It also observed, "the respondent is not layman. He is a practicing advocate. According to him, he specializes in documentation, he cannot therefore plead ignorance about the existence of the recital in the agreement. He cannot plead ignorance of its implications." The case of the complainant was dismissed.

It may be respectfully pointed out that the only ground suggested by the company for return of two cheques worth Rs.9,00,000/- to the complainant was that the sale consideration had been reduced to Rs.7,75,000/-. However, no empirical evidence was given for this reduction. It is common experience that the builders are not much known for voluntarily reducing sale consideration. Usually, it is the other way round and that was the reason why the version of the complainant was accepted by the state commission and the National Commission.

In the circumstances one feels that if the complainant had been a layman he, with the help of proper legal advice, could have perhaps pleaded and proved his version more effectively and convincingly before the august court. In fact, a valuable opportunity was lost to take the lid off the role of unaccounted black money plays in the real estate transactions.

IV MISCELLANEOUS

Judicial activism v. judicial overreach – its impact on structure and infrastructure of consumer fora

Judicial activism v. judicial outreach appears to have spilled over even

14 2007 CTJ 341 (SC).

to the consumer protection law. An innocuous writ petition was filed before the Allahabad High Court by one Jeet Singh Bisht in which the grievance of the writ petitioner was of charging excessive electricity bills by the U.P. State Electricity Board. In the writ petition it was also mentioned that the petitioner had before filing the same approached the District Forum, Chamoli, but it was not decided because the term of two members had expired and the district forum, therefore, was not functioning. The court passed a number of directions directing the state government to constitute a number of state level consumer forums, to be presided over by retired judges of the high court and also fixed their emoluments, etc. On appeal before the Supreme Court in *State of U.P. and Others* v. *Jeet S. Bisht and Anr*.[15] The *amicus curiae* as well as the Additional Solicitor General of India submitted before the court that it should itself fix salary and allowances of the members of the state commissions, and members of the district fora all over India. On this point the two judges constituting the bench, namely, Markandey Katju and S.B. Sinha JJ differed in their opinion. Mostly relying on the doctrine of separation of powers, Katju J expressed the opinion that fixing of pay and allowances of the members of the state commission and district fora and related matters are the statutory duty of the government and so the court could not fix the same. The judge, however, requested the central and state governments to consider fixing adequate salaries and allowances for members of the consumers fora at all three levels, so that they can function effectively and with a free mind. The judge also requested the authorities to fill up vacancies expeditiously so that the fora can function effectively.

On the other hand, Sinha J, *inter alia*, noted that the jurisdiction of the court was expanding. In this context, he cited the examples of the Supreme Courts of some other countries including Israeli Supreme Court and South African Constitutional Courts. He was of the opinion that appropriate directions to the government could be issued in this case and he expressed his inability to agree with Katju J. So, it was directed that the matter be listed before another bench to be nominated by the Chief Justice of India.

Service/consideration

A significant development in consumer protection law was made in *Kishori Lal* v. *Chairman, Employees State Insurance Corporation*,[16] inasmuch as that the services of the ESI hospitals and dispensaries were brought under the umbrella of CP Act. Complainant, Kishori Lal, in this case, was insured with the Employees State Insurance Corporation (the corporation for short). Contribution of the employees including that of the complainant, Kishori Lal, towards insurance scheme under the ESI Act, 1948 were being deducted from the salary and deposited by his employer with the corporation. In 1995, his wife was admitted as a diabetes patient in the ESI Hospital,

15 2007 CTJ 669 (SC).
16 2007 CTJ 557 (SC).

Sonepat. However, her condition deteriorated. Later on he got his wife medically examined in a private hospital. The tests done on her revealed that she had been diagnosed incorrectly in the dispensary and the deterioration in her condition was a direct result of wrong diagnosis. He filed a consumer complaint before the district forum. It was contested by the corporation, *inter-alia*, on the grounds that (i) the complaint filed was not maintainable and was liable to be dismissed since the ESI dispensary, being run by the government the treatment given therein cannot be considered as service rendered for consideration; and (ii) the complainant is not a 'consumer' as defined under the Consumer Protection Act. The district forum relying on *Balbir Singh* v. *ESI Corporation*,[17] held that the services in ESI dispensary were gratuitous and hence out of the purview of the CP Act. Revision petition was dismissed *in limine* by the National Commission. On appeal the Supreme Court framed the following two questions for consideration:

> 1. Whether the service rendered by an ESI hospital is gratuitous or not, and consequently whether it falls within the ambit of 'service' as defined in the Consumer Protection Act, 1986?
> 2. Whether Section 74 read with Section 75 of the Employees' State Insurance Act, 1948 ousts the jurisdiction of the consumer forum as regards the issues involved for consideration.

For determining the first question, the court referred to *Laxman Thamappa* v. *G.M. Central Railways and Others*.[18] In this case the court had held that since the medical facilities in railway hospital were provided to its employees and their dependants as a condition of service, it could not be held to be free of charge. After adverting to various provisions of the ESI Act, the court held that it was apparent that the corporation was required to maintain and establish hospitals and dispensaries and to provide medical aid and surgical service under the Act. Treatment rendered to the insured persons and the members of their families therefore cannot be considered as free treatment since the expenses incurred for the service are met from the contributions made to the insurance scheme by the employer and the employee. On this reasoning, the Supreme Court ruled that the service provided by ESI hospitals/dispensaries fell within the ambit of 'service' and the insured employee was a 'consumer' under the Act.

As regards the second question the court observed that the trend of decisions of the court is that the jurisdiction of the consumer forum should and would not be curtailed unless there is an express provision prohibiting the exercise of jurisdiction by consumer forum. Referring to section 75 of the Act, the court ruled that the ESI courts have been given specific powers over the issues which they can adjudicate and decide as enumerated in the

17 1993 (II) CPJ 1028 (Haryana State Commission).
18 2006 CTJ 1076 (SC).

section itself. However, the claim for damages for negligence of doctors or the ESI hospital/dispensary is not one over which the ESI court can exercise its jurisdiction and therefore, the consumer forum has got the jurisdiction to adjudicate the same. Resultantly, the appeal was allowed by the Supreme Court.

Consumer/jurisdiction

The grievance of Anwar Ali, a consumer/complainant in *Accounts Officer, Jharkhand Electricity Board and Others* vs. *Anwar Ali*,[19] was that his electricity supply was disconnected without notice. On this, compensation of Rs.50,000/- was awarded to him with interest by the district forum, which was upheld by the state commission in appeal and the National Commission in revision. Hence the appeal to the Supreme Court. After hearing the counsel for the parties, the court observed that the question which arose for determination and which had not been decided was whether the consumer forum had jurisdiction to determine tortious acts and liability arising therefrom. It noted the contention of the board that assessment of the duty for unauthorised use of electricity, tampering of meter and distribution of meters and calibration of electric current were matters of technical nature, which could not be decided by the consumer forum. Referring to section 145 read with section 126 it was urged by the board that under the Electricity Act, 2003, jurisdiction of civil court was excluded. It also submitted that the 2003 Act was a complete code in itself and therefore, in the matters of assessment of electricity bills, the consumer forum should have directed the complainant to move before the competent authority under the Electricity Act, read with rules framed thereunder. The court noted that this matter has already been remanded by it to the state commission in *Haryana State Electricity Board* v. *Mam Chand*.[20] In the instant case also since the National Commission had not addressed the question as to whether the consumer of electricity is covered by the definition of 'consumer' as defined under section 2(1)(d) of the Act, the matter was remitted to it by the court to record a positive finding on the issue. It may be submitted that ever since the inception of the CP Act different classes/groups of service-providers have been trying to get out of the net of the Act, which as stated by the Supreme Court is a beneficial enactment for the consumers.

A humanist and consumer friendly approach adopted by the Bombay High Court in *Union of India* v. *Ashok Shankar Sarkale & Others*[21] deserves to be noted. In this case, two young men were thrown out of a running train by some *goondas* and were killed. The next of their kin filed a consumer complaint against the Union of India and railways claiming compensation alleging deficiency in service for not providing proper security on running

19 2007 CTJ 1121 (SC).
20 2006 CTJ 521 (SC).
21 2007 CTJ 349 (Bom).

trains. The complaint was allowed by the district forum and ordered compensation, even though the Union of India and railways had pleaded want of jurisdiction. This order was challenged before the Bombay High Court. The high court relying on *Union of India* v. *Adai Kalam H.*[22] ruled that the district forum had no jurisdiction in the cases like the instant one and that under section 124 A of the Railways Act, 1989, only the railway claims tribunal had jurisdiction. Consequently, the order of the district forum was set aside. But, the high court in a constructive and creative manner noted that the writ petitioners were not denying their liability to pay compensation to the complainants and so while disposing of the writ petition, it directed the writ petitioners to pay the compensation to the complainant as admitted by them before it. A humanist approach indeed!

Camp sitting of National Commission

The prayer of the petitioners in *Consumer Fora Bar Association Trivandrum Through its Secretary* v. *UOI and Others*[23] was for a direction to the Union of India to consider the request of the petitioners for notifying any station in Kerala for camp sitting of the National Commission and in the alternative for a direction to the National Commission to list cases from Kerala in the camp sitting at Bangalore or Chennai.

The high court noticed the provisions of section 22-C of the CP Act, as amended by amendment Act of 2002, which, *inter alia*, states that the National Commission shall ordinarily function at New Delhi and perform its function at such other places as the central government may, in consultation with the National Commission, notify in the Official Gazette, from time to time. The high court noted that the purpose of the amendment obviously was to make available the service of the National Commission at various centres in the country, which was based on the consideration of the convenience of the litigants and the practitioners. The requirement of a camp sitting at any place in Kerala would, therefore, certainly depend upon the number of cases filed from Kerala, cases that are pending and the trend of such filing. Only the National Commission would be able to apprise the central government about the need and requirement of identifying any station in Kerala for camp sitting, if it was so required. Therefore, the court gave a direction to the Union of India to consider the requirement of the camp sitting in any station in Kerala in consultation with the National Commission at the earliest. It also expressed its hope that in between the National Commission should take into account the convenience of the practitioners and the litigants from Kerala and post cases from there at Bangalore or Chennai wherever possible. The writ petition was disposed of accordingly.

22 1993 CPJ 476 (NC).
23 2007 CTJ 222 (Ker).

Procedure

A question arose before the Kerala High Court in *Fon Ess India* v. *Kerala SCDR*[24] whether the admission of the consumer complaint before the district forum was automatic or whether before admitting the complaint and issuing its notice to the opposite party, it was necessary for the district forum or the state commission to consider the question of its maintainability. After considering the relevant provisions of sections 2(1)(b), 2(1)(c) and 2(1)(d) and sections 13 and 19(a) of the CP Act, the high court, *inter-alia*, ruled that admission of a consumer complaint before the district forum/state commission was not automatic and that it required formal admission. The fora have to consider whether the complaint/appeal is frivolous or vexatious and requires admission.

Thus, the procedure relating to 'admission' of consumer complaints/appeals has been judicially demarcated by the high court.

The petitioner in *Dr. (Mrs.) K. Kathuria* v. *National Consumer Disputes Redressal Commission*,[25] had filed a memorandum of appeal under section 19 of the Act before the National Commission and with it she deposited Rs.35,000/- in the shape of a bank draft as per second proviso of the said section. The total amount awarded against her by the state commission was Rs.2,50,000/- plus Rs.5,000/- as expenses. The National Commission, however, directed her to deposit 50% of this amount. On challenge the Delhi High Court ruled that in view of the clear wording of section 19 of the Act, an amount exceeding Rs.35,000/- should not have been directed to be deposited in the instant case. Allowing the writ petition the court held that since the amount of Rs.35,000/- had already been deposited, no further deposit was required to be made by the petitioner.

The impatience shown by some of the district fora and their avoidance to exercise jurisdiction vested in them came to the fore in *B.A. Thresiakutty and Others* v. *M.V. Saradha and Others*.[26] The partners of the J.D. firm in the instant case wanted to file objections against the execution petition filed against it, but the district forum returned the objection petition to the petitioners without recording any order on it. This action/omission of the district forum met with strong disapproval of the high court.

Scope of section 27 of the CP Act, 1986 *vis-a-vis* section 446 of the Companies Act, 1956 came to be examined by the Delhi High Court in *Prudential Capital Markets Ltd.* v. *Dipankar Guha*.[27] An order for recovery of money was passed by the consumer forum in favour of the complainant against the company. However, the Calcutta High Court, meanwhile passed an order for winding up the said company and appointed an official liquidator. The order passed by the consumer forum, thus, remained not complied with. On this the complainant filed penalty proceedings under

24 2007 CTJ 8 (Ker).
25 2007 CTJ 223 (Del).
26 2007 CTJ 11 (Ker).
27 2007 CTJ 11 25 (Del).

section 27 of the Act praying for issue of warrant of arrest against the company which was allowed. This order was challenged in the writ petition before the Delhi High Court. It was contended by the company that once an order had been passed under section 446 of the Companies Act, no suit or consumer complaint could be maintained. However, relying on its own judgment in *Ravikant and Others* v. *National Consumer Disputes Redressal Commission*[28] the court ruled that penal provisions under section 27 of the Act were in addition to the mode of recovery contemplated by section 25 of the Act and therefore the pendency of winding up proceedings would not come in the way of the consumer forum passing orders under section 27 of the Act, which orders were penal in nature. Thus, the plea of the petitioner that a winding up order barred proceedings under section 27 of the Act was repelled by the court.

The high court also dealt with the contention of the counsel for the petitioner that its appeal preferred under section 15 of the CP Act could not be registered *suo motu* as revision under section 17(1) (b) of the Act by the state commission. The high court noted that no revision lay from an order passed under section17(1) (b) and therefore, the petitioner was right in contending that the order of the state commission treating its appeal as revision petition, thereby depriving it of the right of revision petition to the National Commission, was not justified particularly when the former had not given any reason whatsoever for treating the petitioner's appeal as a revision.

In a somewhat similar case, it was, *inter alia*, held by the Madras High Court in *S. Ragavachari* v. *V.S. Narayanan and Another*,[29] that the provisions of section 27 of the CP Act, 1986 were of criminal/penal nature and, therefore, an order passed under section 22 of the Sick Industrial Companies (Special Provisions) Act, would not bar the proceedings under section 27 of the 1986 Act.

Consensual settlement of consumer disputes

The brief facts in *Raythara Sahakari Bank Ltd.* v. *Chandrakala R. Das*,[30] were that on 4.8.2001 a huge quantity of gold ornaments including those pledged by the complainant with the appellant bank were stolen. FIR was lodged. On 1.10.2003 the bank submitted its claim to the insurance company, but it was repudiated. On 17.1.2004 the bank convened a meeting of more than 400 persons, who were jewel loan borrowers. It was resolved that each person who had pledged ornaments shall be paid @ Rs.410/- per gram which was the prevailing market rate at the time of theft. It was also resolved that no interest shall be charged on all such jewel loans. However, the complainant issued a notice to the bank demanding a higher value for gold ornaments pledged by her. The bank requested her to accept the rate fixed in the resolution dated 17.1.2004. She did not relent and filed a consumer

28 1996 CTJ 809 (Del).
29 2007 CTJ 793.
30 2007 CTJ 6 (SC).

complaint before the district forum with a prayer for a direction to the appellant bank to pay the entire amount with upto date interest at the present market rate of gold, i.e. at the rate of Rs.573/- per gram with making charges and compensation etc. The bank pleaded that there was no default in service because the non-delivery of the jewels was on account of the admitted theft in the bank. It expressed its willingness to pay at the rate fixed for all jewel borrowers as per the resolution dated 17.1.2004. However, the district forum decreed the case of the complainant at higher rate of Rs.573/- per gram. The appeal filed before the state commission and the revision petition filed before the National Commission were dismissed. Hence this appeal to the Supreme Court.

Before the Supreme Court, counsel for the appellant bank submitted that neither the state commission nor the National Commission had considered the effect of the decision taken on 17.1.2004 in the meeting where more than 400 borrowers had accepted the rate and that no other complaint had been lodged. But taking advantage of the orders passed by the lower fora, a large number of other people were also trying to re-open the matter. On the other hand, the counsel for the complainant/ respondent supported the order of the district forum. In the facts and circumstances of the case, the Supreme Court found that all through the stand of the bank had been that all the borrowers, except the complainant, had accepted the rate arrived at consensually at the meeting. The complainant did not dispute that such a decision had been taken. The court noted that it was not clear whether the complainant had attended the meeting which was convened and whether all the borrowers were given chance to participate. The decision in the meeting undisputedly was to the effect that value of gold on the date of theft was to be paid. There were no other complaints except the one filed by the complainant. The court was of the view that it was open to the state commission and the National Commission to consider the stand relating to the acceptance of rate fixed at the meeting and its effect on the claim of the complainant. But they had not been done. Therefore, the court set aside the order of the National Commission and remitted the case to it for fresh consideration in the light of the decision taken on 17.1.2004. The order clearly shows the anxiety of the apex court to encourage consensual mode of settlement of disputes thus curtailing avoidable litigation.

Conduct of consumer fora

In *Bal Bhawan Public School* v. *Shiv Shankar Gupta*,[31] the Delhi State Commission issued the following directions:

> "15. By this order, we hereby restrain all the Institutes, Societies, educational bodies, schools who impart every and any kind of education, training, coaching and/or engaged in any kind of activity

31 2007 CTJ 61.

> concerned with imparting education of any and every kind from charging any other consideration like maintenance fund, building fund or any other kind of fund except the tuition fees and reasonable fee of additional activities if imparted and any violation, if brought to our notice, shall be visited with heavy punitive damages and even sentence of imprisonment or fine or both. They cannot be allowed to thrive upon those whom they provide the service of education, training for which they charge fees independently. Their main objective is to impart education and not build their buildings or property by charging such funds.
> 16. ...
> 17. By this general order, we direct that every consumer who shall be filing complaint under Section 12 of the Consumer Protection Act, 1986 w.e.f. 1.11.2006 shall be entitled for compensation of Rs.10,000/- payable by the Government of NCT of Delhi either through Chief Secretary or Secretary (Consumer Affairs) if his complaint is not decided within the period of one year on account of Government of NCT of Delhi being guilty for deficiency in service in not ensuring the statutory period as prescribed under Section 13(3A) of the Act, i.e. within three to five months for want of requisite infrastructure, number of District Fora, Benches of State Commission, as may be necessary for deciding the complaints of the consumers strictly in terms of Section 13 (3A) of the Act."

These directions were challenged before the Delhi High Court in *Government of NCT of Delhi* v. *Bal Bhawan Public School*.[32] The court noted that these directions were issued by the state commission despite the facts that neither the educational institutions etc. of NCT Delhi nor the Government of NCT Delhi were parties before it and without any notice being issued to them. The court expressed its reprobation of the directions in the following words:

> It is painful to note that repeatedly the State Consumer Forum, Government of NCT Delhi constituted under the Consumer Protection Act, 1986 is embarking upon a journey which it cannot voyage.
> 2. Virtually every day orders passed by the Chairman of the said Forum and its Member are being impugned before me; grievance being to the inappropriate choice of words and expressions of vengeance used.
> 3. The orders which are being brought to my notice arouse a lurking doubt that the State Forum is passing orders with a predetermined mind.

32 2007 CTJ 458 (Del).

No further comments are required.

Electricity

Ambit and scope of section 26 (6) of the Indian Electricity Act, 1910 came for consideration before the Supreme Court in *Sub Divisional Officer (P), UHBVNL* v. *Dharam Pal*".[33] The basic stand of the complainant was that prior to the inspection on 2.7.2000, there was sparking in the CT box installed at his factory premises and he immediately informed the appellant and requested for rectification of the defect. But instead of doing that, a demand was raised for alleged tampering with the meter. He pleaded that there was no question of any tampering. He reiterated that a reference should be made to the electrical inspector in terms of section 26 (6) of the Act. It was also submitted that a notice was required to be given to him before raising a demand, which was not done. The defence of the opposite party was that it was a case of tampering with the meter and so there was no question of referring the matter to the electrical inspector. The district forum accepted the version of the complainant and ordered that a reference under section 26 (6) ought to have been made. Appeal was dismissed by the state commission and on revision by the National Commission. In appeal before the Supreme Court, it was submitted on behalf of the appellant that in case of tampering with the meter, there was no scope for referring to the electrical inspector in terms of section 26 (6) of the Act. It was also pleaded that no notice was required to be given before raising the demand. Referring to *M.P. Electricity* v. *Bansantibai*,[34] *Belwal Spinning Mills Ltd. and Ors.* v. *U.P. State Electricity Board and Anr.*[35] and *J.M.D. Alloys Ltd.* v. *Bihar State Electricity Board*[36] the apex court observed that section 26 (6) would have no applicability (i) where the consumer was found to have committed a fraud with the licensee and thereby illegally extracted the supply of energy and prevented or avoided its recording; or (ii) had resorted to a trick or device whereby also the electricity was consumed by the consumer without being recorded by the meter. After considering the case law, the court ruled that what was contemplated by section 26 (6) was a running meter, but which on account of some technical defect ran either fast or slow with the result that it did not register the correct amount of energy supplied and in such cases, reference to the electrical inspector under section 26(6) had to be made. Section 26(6) had no application in a case where a meter became completely non-functional on account of any reason whatsoever. Relying on *Bansantibai* and *J.M.D. Alloys Ltd.* the court ruled that section 26 (6) was applicable to cases of tampering or theft or pilferage of electricity. It was held that in such cases, neither the limitation period nor the procedure for raising demand for electricity consumed would arise. Accordingly, the

33 2007 CTJ 1 (SC).
34 (1988) 1 SCC 23.
35 (1997) 6 SCC 740.
36 (2003) 5 SCC 226.

appeal was allowed and the orders of the consumer fora below were set-aside.

The country is passing through an energy crisis. The cases of pilferage of energy are not rare. Therefore, this authority would perhaps serve as a suitable deterrent to pilferage. However, it may be submitted that before creating a civil liability by any public authority against a person, principle of *audi alteram partem* needs to be observed. Therefore, in the instant case even if there was tampering with meter or pilferage, a show cause notice before raising the demand should have been given in keeping with the requirement of administrative law. It is hoped in some future case this point will be taken care of by the courts.

Section 10 of the Carriers Act

Scope of section 10 of the Carriers Act, 1965 (1965 Act) was examined by the apex court in *Transport Corporation of India Ltd.* v. *Veljan Hydrair Ltd.*[38] The case of the complainant was that it booked a consignment with the transport company for the destination at agreed freight. At the destination the customer was not in a position to clear the consignment. So, the consignor advised the transporters to rebook the consignment back to the point of origin. However, the transporter/carrier failed to deliver the consignment to the complainant. Every time the complainant asked the carrier to report about the status and the process of locating the goods, it was told to wait. The carrier never said that it had lost the consignment. The complainant had no knowledge of the loss, and therefore, it did not issue any notice under section 10 of the 1965 Act. When the consignment was not delivered back to the consignor, he served a notice dated 27.10.2000 on the carrier demanding payment and also filed a consumer complaint before the district forum alleging that non-delivery of consignment amounted to deficiency in service and, therefore, the carrier was liable to pay Rs.5,83,440/- as compensation. The main ground of defence of the carrier was that the complainant had not issued a notice under section 10 of the 1965 Act before filing the consumer complaint and therefore, it was barred in view of section 10 of the Act. The state commission allowed the complaint holding that the failure of the carrier to deliver the consignment amounted to deficiency in service. The state commission directed the carrier to pay the value of the consignment less the freight charges with interest from the date of booking and costs. The appeal filed by the carrier was dismissed by the National Commission. Hence this appeal to the Supreme Court.

Dealing with the main defence of the carrier relating to bar of suit/ consumer complaint in the absence of notice under section 10 of the 1965 Act, the court noted that section 10 of the Act, *inter alia*, mandated that no suit could be instituted against a common carrier for the loss of goods or injury to goods including containers entrusted to it for carriage, unless a

37 2007 CTJ 333 (SC).

notice in writing had been given to it before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff. The court observed that such notice under section 10 would certainly be required where the common carrier delivers the goods in a damaged condition or where it loses the goods entrusted for carriage and informs about such loss to the consignor/ consignee /owner. It further held that where there was no loss or injury to the goods (as in the present case) but the common carrier wrongly or illegally refused to deliver goods and the person entitled to delivery initiated action for non-delivery, obviously section 10 would not apply. On the basis of the pleadings of the parties and the evidence on record, the court concluded that the carrier had never informed the complainant about the loss of the goods nor it was delivered to him with any injury to it. Therefore, there was no legal requirement for him to serve a notice under section 10 of the 1965 Act on the carrier and the case was not covered under the said section. Dismissing the appeal the court concluded that it was a case of non-delivery of goods as contra-distinguished from the loss of goods or causing injury to the goods and, therefore, no notice under section 10 of the 1965 Act was necessary. A creative, constructive and consumer friendly approach.

V CONCLUSION

Some trends of development of consumer protection law which can be discerned from this survey are that by and large the high courts and the Supreme Court have been supportive of the CP Act and the consumer fora established thereunder. As seen in *Dipankar Guha* and *S Ragava* the high courts usually do not permit any technical impediments to the smooth progress of cases before the consumer fora. In *Kishori Lal*, the Supreme Court has reiterated that the trend of the decisions of this court is that the jurisdiction of consumer fora should not and would not be prohibited unless there is an express provision prohibiting the same. It augurs well for the consumer forum.

But it may be submitted that in view of *LDA* v. *M K Gupta*,[38] and a catena of housing and electricity cases decided thereafter the consumers were under a genuine impression and belief that cases of this nature fell under the umbrella of consumer protection law. However, it appears that *Syndicate Bank* and *Anwar Ali* would require reopening and re-examination of these questions though to a limited extent.

Survey of the insurance law suggests that the Supreme Court has been liberal to the insured insofar as it has ruled that the exclusionary clause should be strictly construed and that the onus is on the insurer to prove that its case is covered under such clause. At the same time the holdings in *Laxmi Narayan Dhut* and *Prabhu Lal* clearly suggest that the apex court is very

38 (1993) 4 SCALE 370 (SC).

keen to enforce some measure of discipline on Indian roads which are notoriously chaotic, by ensuring that the transport and goods carrier vehicles are plied only by persons holding valid licence and further that in case of a fake licence, the benefit of insurance shall be available only to the third party and not to the owner of the offending vehicle. A good measure to control road rage.

Jeet Singh Bisht suggests that a lot remains to be done for putting the consumer fora, at different levels in shape, particularly their personnel, structure and infrastructure. *Consumer Fora Bar Association, Trivandrum* suggests that a better use needs to be made of section 22 C of the C P Act in line with Gandhian approach to deliver justice at doorsteps. Anguish expressed by the Delhi High Court in *Bal Bhavan Public School*,[39] over the inappropriate remarks made and directions issued by the state commission has already been referred to. Self restraint is ornament of judiciary. One hopes that this stray instance is confined only to this particular state commission. The National Commission has to act as a vigilant watchdog over the consumer fora at both levels under its control.

A perusal of the reports in the leading consumer protection law journals shows that the high net worth insurance claims by big corporations and large firms have been flooding the National Commission and the state commissions, usually the former in its original jurisdiction. This appears to be the direct result of the distinction drawn by the National Commission between the phrases "commercial purpose" and "commercial activity" in *Harsolia Motors* v. *National Insurance Company Ltd*.[40] Technically this interpretation may be correct. But its consequences have been that the state commissions and National Commission have been kept busy by big business houses claiming crores of compensation. As pointed out by the Supreme Court in *LDA* v. *M K Gupta* the aim and objective of the enactment of C P Act, 1986 was to provide relief to *aam adami*. But after *Harsolia*, big corporations and large firms have become the elite beneficiaries of the Act, which was perhaps not intended by the legislature. It is respectfully submitted that *Harsolia* needs reconsideration. In the alternative, the legislature would do well to intervene and restore the pre-*Harsolia* position, which would be a singular service to the ordinary consumer community, the man in the street, as distinguished from big business.

Lastly, it is heartening to note that with the C P Act in operation for about 22 years now, the consumer fora have struck their roots firmly and have entrenched themselves in the justice delivery system of the country as also in the public consciousness. A perusal of consumer cases show that they have not been able to eliminate delays upto the degree expected of them under the Act, yet with all their limitations they have rendered a yeoman service to the consumers and helped in democratization of the process by empowering the consumers to directly participate in it.

39 2007 CTJ 458 (Del).
40 2005 CTJ 141.