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CONSUMER PROTECTION LAW*Ashok R. Patil**

I INTRODUCTION

THE EMERGENCES of the global trade and rapid growth of e-commerce market in 21st century, the consumer are facing various issues and exploited in one or the other way. The law Consumer Protection Act, 1986 governing the concerns of the customers and survived a long but a mere survival has raised various questions on the fulfilment of its objective and dire need of an amendment or a replacement to fulfil the dynamic needs of the customer.

In order to gain the growing complexity in consumer disputes, a consumer protection bill, 2015 was introduced before the Lok Sabha in August, 2015. The Bill was submitted to Standing Committee on Food, Consumer Affairs and Public Distribution for perusal, who in return submitted their report on April 26, 2016. On review of the standing committee report, Ministry of Consumer Affairs and Food Distribution, *Ram Vilas Paswan* on January 5, 2018 introduced Consumer Protection Bill, 2018 (CPB, 2018). The salient features of the bill include establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of the consumers and will be empowered to investigate, recall, refund and impose penalties; provision for product liability action in cases of personal injury, death, or property damage caused by or resulting from any product; provision for mediation as an Alternate Dispute Resolution (ADR) making the process of dispute adjudication simpler and quicker and simplification of the process of adjudication by the consumer *fora*. The consumer protection bill was passed in Lok Sabha on December 20, 2018. Then CPB, 2018 lapsed because of announcement of parliamentary elections. It will be passed in parliament once again by new government. The Bill will replace the Consumer Protection Act, 1986 once it is passed and come into force. The Bill enforces consumer rights, and provides a mechanism for redressal of complaints regarding defect in goods and deficiency in services.

In the year of 2018, many of the consumer welfare legislation has come up with the various rules and regulation in order to promote and protect the consumers. In the

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meanwhile the National Commission and Supreme Court have also played a vital role in protection of consumer right. The cases that come up were mostly related to the issues relating to deficiency in services in telecom, insurance, banking, education, real-estate and medical profession *etc.*

II TELECOM SECTOR

The telecommunications sector is concerned with providing telephone, television broadcasting and internet services all over the country. As per official statistics and reports, India has a vast telecom network. As of October 31, 2018, there were nearly 1.192 million telephone subscribers over the country, which is the second largest subscriber base worldwide.¹ Further, the current internet user base of 500 million is expected to reach 627 million by the end of 2019² and is estimated to increase by 500 million over the next five years.³

Negligence resulting in deficiency of service

In *Idea Cellular Ltd. v. Angad Kumar*⁴ where the Idea Cellular has launched the scheme known as 'Tyoharan Ki Saugat' for the group of eligible subscribers between October 22, 2012 to October 24, 2012. In order for a subscriber to be eligible for the scheme, it was necessary that the participant was the 'rightful owner/user of the pre-paid mobile connection of Idea, registered in Uttar Pradesh telecom circle and in whose name the mobile connection is active. On November 30, 2012 Angad Kumar the respondent received a message on his mobile number that you had won an Alto Car in pursuance of the aforesaid scheme. The respondent approached the office of the petitioner for the delivery of the said car but the respondent not provided an Alto Car. The respondent filed a consumer complaint on April 6, 2013 before the District Forum, Gorakhpur, claiming the Alto Car or its value along with the compensation of Rs.10,000/- and Rs.5,000/- as litigation cost. The contention of the petitioner is that on the same date after some time a revised message was sent to this number as well as to others stating that earlier sent message be ignored. It was also stated that this number was not registered in the name of the complainant rather it was registered in the name of Lal Bihari and therefore, the complainant was not entitled to file this complaint. The district forum allowed the complaint and directed the opposite party to pay the claimed price of the Alto car along with compensation of Rs.5,000/- plus cost of litigation of Rs.2,000/- within a period of one month, failing which 6% p.a. interest was payable till actual payment. Aggrieved by the order of the district forum, the OP preferred an appeal before the state commission. The state commission upheld the order of the district forum except the order relating to Rs.5,000/- to be paid to the complainant as compensation which was set aside.

1 Telecom Regulatory Authority of India, 'Press Release No. 01/2019' (Jan 2, 2019). Available at: <https://main.trai.gov.in/sites/default/files/PRNo01Eng02012019.pdf> (last visited on July 29, 2019).

2 KantarIMRB, 'Digital adoption & usage trends' 5, available at: https://imrbint.com/images/common/ICUBE%E2%84%A2_2019_Highlights.pdf (last visited on July 29, 2019).

3 IBEF, 'Telecom Industry in India' available at: <https://www.ibef.org/industry/telecommunications.aspx> (last visited on July 29, 2019).

4 2018 SCC On Line NCDRC 1278.

The issue involved in this case was whether the petitioner is negligent in his service? The National Commission observed that the mobile number of the complainant was in the list of competitors and could have been winner. After receiving the message of winning the Alto car, it is obvious that the complainant must have taken this message to be true and after he did not receive any revised message as he claims, denying him Alto car by the petitioner would really have caused harassment and mental trauma to a great extent. The action of the petitioner company would definitely amount to causing undue harassment and mental agony and shattering of expectation of the complainant. Due to this negligence of the petitioner company, the complainant is entitled to appropriate compensation for the mental trauma, harassment and shattering of expectation, if not a car. Hence the revision petition is partly allowed and order of the district forum stands modified to the extent that instead of Alto car or its price the petitioner company shall be liable to pay Rs.1,00,000/- to the complainant. Consequently, the impugned order of the state commission also stands modified. The amount may be paid within a period of 45 days from the date of this order, failing which the amount of Rs.1,00,000/- would attract interest @ 10% p.a. from the date of this order till actual payment. A cost of litigation of Rs.5,000/- is also ordered to be paid to the complainant by the petitioner.

In case of *Uttamkumar Samanta v. Vodafone East Limited.*,⁵ the complainant's purchased a post-paid internet service plan from the respondent no.2 authorised by respondent no.1, on purchase of the same the respondent no.1 and 2 gave a Data Sim card and a device for Rs.5,500/- but never informed him that all transactions are final and no refund would be made. On payment of Rs.5,000/- on May 7, 2013 they issued him a printed receipt. On May 8, 2013 the data card was activated and internet service was started. On May 9, 2013 a bill was sent by email. On May 10, 2013 internet service was suddenly disconnected and stopped without any intimation or message to him. Due to such sudden disconnection, the complainant suffered irreparably and for such deficiencies he prayed for compensation of Rs. 99,95,500/- before the state commission. The respondent no.1 and 2 contended that in the absence of a valid proof of residence they could not activate the connection. The connection was availed by the complainant on May 8, 2013 and the first address verification was made on May 9, 2013 and as the complainant was not residing in the given address, the connection was not activated.

The state commission observed during the arguments that the respondent have not only committed a deficiency in service but also adopted unfair trade practice. He further submitted that respondent no.3 and 5 (Secretary Government of India Telecommunications, Chairperson TRAI and Secretary Government of India Ministry of Corporate Affairs) are equally responsible because they should take the appropriate measure against the respondents for adopting unfair trade practice in promoting their business. The state commission dismissed the complaint on the ground that the amount alleged by the complainant was only Rs.5,500/- but he sought the disproportionate claim of Rs.99,95,500/- with cost of Rs. 10,000/- to be paid to the state consumer

5 2018 SCC On Line NCDRC 402.

welfare fund within 30 days, failing which the amount shall carry an interest @9% p.a. till its realization. Aggrieved by the decision of the state commission the complainant preferred the appeal before this commission.

The National Commission observed that the aggregate amount paid for the internet service was Rs.5,500/- and sought compensation of Rs.99,95,500/- which was on the face of it is disproportionately high and the component of the total compensation claimed is again unreasonable and *albeit* absurd. It is clearly evident that the complainant is attempting to misuse the statutory processes provided for better protection of interest of the consumers to attempt wrong gains and to create nuisance value qua the Respondents. The appeal is dismissed as it is clearly frivolous and vexatious with Cost of Rs.500/-.

III MEDICAL SECTOR

As per official reports and statistics, India has a population of 133.92 crores⁶ and only 10.4 lakh registered allopathic doctors.⁷ This ratio of 1 doctor for 1278 patients is a far cry from 1 doctor for 1000 patients as recommended by the WHO.⁸ With nearly 65% of the health expenditure being out-of-pocket expenditure and nearly 63 million Indians moving below the poverty line due to health expenditure every year,⁹ it is clear that the medical sector suffers from a lack of manpower and health insurance policies.

Reasonable care of patient not taken

In case of *Post Graduate Institute of Medical Education and Research, Chandigarh v. Jasmine D/o Harbans Singh*,¹⁰ Pritpal Kaur, the patient was suffering from eye problem and was admitted in emergency at Advance Eye Care Centre in the OP hospital, the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh. She was also suffering from other health problems, like fever, difficulty in breathing with pain in abdomen, backache and diarrhoea. The on duty doctor treated her and discharged her with the advice of taking some antibiotics. The complainant alleges that the patient should have been referred to cardiac emergency as she was suffering from a known case of restrictive cardiomyopathy having diastolic heart failure, raised JVP with tender hepatomegaly. On the same day complainant took his wife to Medical OPD at the OP hospital who referred her to the Cardiac OPD Doctor (OP2). He examined her and prescribed her some tablets. Without consulting any senior Cardiologist he ignored extremely low BP and serious condition of the patient.

6 Worldometers, 'India Population', available at: <https://www.worldometers.info/world-population/india-population> (last visited on July 29, 2019).

7 Central Bureau of Health Intelligence, 'National Health Profile 2018' at 15.

8 WHO, 'Density of medical doctors (per 10,000 population)', available at: https://www.who.int/gho/health_workforce/physicians_density/en/ (last visited on Dec.20,2019).

9 Jordan Levinson, "63 million Indians are pushed into poverty by health expenses every year – and drugs are the chief cause" *The Centre For Disease Dynamics, Economics & Policy*, June 4, 2016), available at: https://cddep.org/blog/posts/63_million_indians_are_pushed_poverty_health_expenses_each_year-and_drugs_are_chief_cause/ (last visited on Dec. 29, 2019).

10 2018 SCC OnLine NCDRC 623.

The complainant took her back home but again, he brought her to Advanced Eye Centre for further check-up, their one of the Doctor examined her and advised her to take ENT consultation. Accordingly, the patient had visited ENT OPD. Despite her sick condition with low BP, ENT Doctor did not advise the patient to get admitted in hospital. The doctors failed to realise the seriousness and did not admit her either in ICU or CCU. Thereafter, the complainant took the patient to PGI in more deteriorated condition. She was treated in medical emergency ward by junior doctors. For 24 hours, no doctor either from cardiology or medicine attended her. Complainant had made several requests to the doctors to shift the patient to ICU/CCU, but till her death, she was not shifted to ICU. Ultimately the patient died. It was alleged that the death was due to medical negligence and deficiency in service on the doctors at the PGIMER. Harbans Singh, the husband of deceased patient, filed a complaint before the state commission seeking proper relief. Harbans Singh died during the pendency of the complaint. Therefore, his three daughters were brought as legal heirs on record. The state commission, on the basis of evidence given by both parties, allowed the complaint and directed the opposite party to pay compensation. The issue was, Whether the opposite party exercised reasonable care in treating the patient? The contentions of the OP that there was no evidence to prove that the patient was required to be shifted to ICU or CCU, the state commission has ignored the expert opinion given and the patient was under treatment of team of expert doctors were rejected by National Commission.

National Commission held that the opposite party failed to exercise reasonable care with the patient. It made the opposite party hospital vicariously liable for the acts of its doctors, directing it to pay a compensation of 6,60,000.

In *Shoda Devi v. Ddu/Ripon, Hospital, Shimla*,¹¹ complainant 'Shoda Devi' was suffering from abdominal pain and some menstrual problem. She visited the Deen Dayal Upadhyay Hospital, OP1. She was examined by a doctor OP2. Tests were conducted; she was diagnosed as having fibroid and endometrial hyperplasia. She was advised to undergo a minor operation. It was alleged that the operation was performed without any anaesthesia and on the instructions of OP2, an injection in her right forearm was given by the staff nurse (OP3). During administration of injection, the complainant felt acute pain in the right hand, she informed the same to the OP2, but OP2 ignored her cries and the unbearable pain undergone by her. Throughout the procedure, she continued to feel acute pain in her entire right forearm. No remedial measures were taken. The doctors attended to her after considerable delay and thereafter, referred her to Indira Gandhi Medical College and Hospital, Shimla, where amputation of her right forearm above elbow was performed. The complainant filed a complaint before the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla for alleged medical negligence against the opposite parties, which led to amputation of her right hand and 100% disability. The state commission dismissed the complaint. The complainant filed an appeal before the National Commission.

11 2018 SCC OnLine NCDRC 619.

The issue here was whether there was negligence on part of the Hospital? The NCDRC considered the facts that the patient was referred to IGMCH in an inhumane manner. The opposite parties did not call any ambulance, although it was heavily raining at that time. Even though the patient was suffering pain throughout the procedure, the doctors did not cater to her. The extensive delay caused left no possibility of saving the arm. Thus, the opposite parties were held negligent and deficient in providing service to the patient. The OP1-hospital was made vicariously liable for the actions of OP2 and OP3. An amount of Rs. 2,93,526/- was ordered as *ex gratia* amount along with Rs.2,00,000/- as compensation to the complainant.

Failure to perform surgery in ICU

In *Bijoy Sinha Roy (d) By Lr. v. Biswanath Das*,¹² the complaint is filed by legal heirs of the deceased Bijoy Roy who had some menstrual problem. The complainants had consulted Bishwanath Das (respondent no.1) a gynaecologist, it was found that the patient had multiple fibroids uterus. She was advised to undergo Hysterectomy. After about five months, she had severe bleeding and was advised emergency Hysterectomy at Ashutosh Nursing Home. She was also suffering from high blood pressure and her haemoglobin was around 7 gm% which indicated that she was anaemic. The treatment was given for the said problems but was not success. Finally, operation was conducted after which she did not regain consciousness and since the nursing home did not have the ICU facility, she was shifted to Repose Nursing Home and thereafter to SSKM Hospital where she died on January 17, 1994. The appellant filed a complaint before the state commission on June 16, 1994 alleging the decision to perform surgery without first controlling blood pressure and haemoglobin amounted to medical negligence. The appellant also alleged that the surgery was not an emergency but a planned one which was conducted six months after the disease first surfaced and also the decision to perform surgery at a nursing home which did not have the ICU for post-operative needs amounted to medical negligence. The state commission, *vide* order dated September 19, 2005, held that there was medical negligence as surgery was conducted without controlling the blood pressure and haemoglobin. The complainant as well as the opposite parties preferred appeals. The National Commission reversed the above finding as procedure could be done on a patient with diastolic blood pressure of not more than 110 mm Hg and hemoglobin concentration of even up to 6 g/dl. Hence the complainants preferred appeal before Supreme Court.

On appeal to the Supreme Court by the complainant it was pointed out by the Supreme Court that neither the state nor the National Consumer Disputes Redressal Commission had examined the plea of the appellant in this case that the operation should not have been performed at a nursing home which did not have the ICU when it could be reasonably foreseen that without ICU there was post-operative risk to the life of the patient. Supreme Court through its order awarded the compensation of Rs. 5 lakh to the heirs of the deceased for negligence on the part of the respondent.

12 (2018) 13 SCC 224

Death of patient after treatment

In *Sheela Hirba Naik Gaunekar v. Apollo Hospitals Ltd.*,¹³ the complainant is the wife of the deceased. Gaunekar, who underwent angioplasty treatment in the Apollo Hospitals Ltd., Chennai. Angioplasty procedure was conducted on May 14, 1996. The patient died shortly thereafter of a heart attack on May 18, 1996. The complainant-wife preferred a claim petition before the National Commission alleging that the death of her husband was on account of the medical negligence on the part of the hospital and its doctors and due to deficiency of service. Thus, she is entitled to compensation for a sum of Rs 70 lakhs. The commission heard the complainant-wife and the respondent hospital, recorded evidence adduced by both the parties and examined the correctness of the claim made by the complainant-wife. The commission also examined Mathews Samuel Kalarickal, the doctor who performed the surgery. The commission after examining the evidence and the relevant records came to the conclusion that there was negligence on the part of the hospital. The commission also awarded an amount of Rs 2 lakhs along with interest at 6% p.a as compensation to the complainant. Thus, the correctness of these findings has been questioned by the respondent-apollo hospitals in the connected appeal filed by it, urging that the said findings are not based on proper evaluation of evidence on record. Who further contended that the death of the deceased had been caused due to heart failure and therefore, the finding recorded by the commission that death had occurred as a result of medical negligence is an erroneous finding. It further contended that the finding recorded by the commission in awarding the amount as compensation, is also not legally correct based on any substantial evidence.

The Supreme Court affirmed the findings recorded by the commission on the question of medical negligence and deficiency in services rendered by the respondent-hospital. With respect to the decision of the commission on awarding compensation, the income tax declaration filed by the deceased to the during the financial year in which death had occurred was taken on record as evidence on behalf of the complainant. The court also applied the multiplier method as adopted in the Motor Vehicles Act, 1988. As the litigation has been going on for nearly twenty years, it awarded Rs 40 lakhs as compensation. On account of mental agony, loss of head of the family, loss of consortium and loss of love and affection, a consolidated sum of Rs 10 lakhs was awarded. Thus, a total amount of Rs 50 lakhs was awarded as compensation *in toto*. Further, interest has to be awarded at 9% per annum, instead of 6% per annum, from the date of the institution of the complaint till the date of payment. Mathews was also directed to pay Rs 10 lakhs with proportionate interest to the complainant, out of total of Rs 50 lakhs. The hospital was directed to comply with this order and submit compliance report to the registry of this court within eight weeks from the date of receipt of the copy of the order.

Negligence in performing operation

In *S.K. Jhunjhunwala v. Dhanwanti Kumar*,¹⁴ the appellant was a practising doctor since 1969 and is qualified surgeon having expertise, especially in gall bladder

13 (2018) 12 SCC 699.

14 AIR 2018 SC 4625.

surgery. He was a visiting consultant to several Hospital out of which the Life Line Diagnostic Center and Nursing Home, Calcutta (respondent no.2). The respondent no.1 *i.e.*, Dhanwanti Kumar a resident of Calcutta had a pain in her Abdomen consulted the local doctor but she did not get any relief. Then she consulted Lakshmi Basu who on examination, advised her to go various medical test. On examination of the report of the medical test, opined that her Gall Bladder had two calculi in its lumen and the same could be cured only by operation. Basu advised her to undergo laparoscopic surgery from any good surgeon and suggested the appellant. On advice of the same she consulted appellant S. K. Jhunjhunwala, and he advised to get herself admitted in respondent no.2's Hospital for undergoing surgery. The respondent no.1 got herself admitted and the appellant performed the laparoscopy and open surgery and removed the gall bladder. Thereafter she was in the hospital for about a week and discharged. he appellant denying the allegations contended that he after examining advised her to go for surgery of gall bladder, which may even include removal of gall bladder and also the appellant stated that after starting laparoscopic surgery, he noticed swelling, inflammation and adhesion on her gall bladder and, therefore, he came out of the operation theatre and disclosed these facts to respondent no. 1's husband and told him only conventional procedure of surgery is the option to remove the malady. The husband of respondent no. 1 agreed for the option suggested by the appellant and the appellant accordingly performed conventional surgery and also denied the allegations of any kind of negligence or carelessness or inefficiency in performing the surgery on respondent no.1 and stated that all kinds of precautions to the best of his ability and capacity, which were necessary to perform the surgery were taken by him and by the team of doctors. The respondent no. 1 on December 1997 filed a complaint under section 10 of the Consumer Protection Act, 1986 against the appellant and respondent no. 2 claiming compensation for the loss, mental suffering and pain suffered by her throughout after the surgery on account of negligence of the appellant in performing the surgery of her gall bladder, on the grounds that she had never given her consent for performing general surgery of her gall bladder rather she had given consent for performing laparoscopy surgery only. The state commission dismissed the complaint filed by the respondent no.1 finding no merits in the case on the basis of the adduced evidence of the parties in support of their respective cases set up in their pleadings. Aggrieved by the order of respondent approached the National Commission. The National Commission allowed the appeal filed by the respondent no.1 in part and awarded a total compensation of Rs.2 lakhs to be paid by the appellant to respondent no.1 on account of negligence on the part of petitioner. Aggrieved by the same petitioner approached Supreme Court by way of Special Leave Petition (SLP).

The issue here was whether the appellant is negligent or is carelessness or inefficiency in performing the surgery? The Supreme Court observed that no medical evidence of any expert was adduced by the respondent no.1 to prove any specific kind of negligence on the part of the appellant in performing the surgery of gall bladder except raising the issue of 'non-giving of express consent.' The court said that the suffering of ailment by the patient after surgery is one thing. It may be due to myriad reasons known in medical jurisprudence. Whereas suffering of any such ailment as a

result of improper performance of the surgery and that too with the degree of negligence on the part of doctor is another thing. It also further said that to prove the case of negligence of a doctor, the medical evidence of experts is required. Hence, the impugned order was set aside and the order passed by the state commission was restored.

IV RAILWAYS SECTOR

The Indian Railways are operated by the Ministry of Railways under the government of India. It is the third largest rail network in the world with a route length of over 115,000 km with nearly 23 million passengers and 3 million tonnes of freight being transported daily.¹⁵ In the day-to-day life of consumer, the railways are an important means of travel. Commuting for work, travelling to another place for tourism purposes or transporting freight for business etc. are the major usages of the railways. Accordingly, the consumer grievances with the railways arise due to difficulties in booking tickets, inordinate and unjustified delays in the railway schedule, unclean food and water served, loss of any personal belongings etc.

Theft of belongings of complainant

In *Chief Commercial Officer (Manager) v. Hargovind Chaudhury*,¹⁶ the Hargovind Chaudhury (complainant/respondent) travelled from Bhopal to Howrah by Shipra Express on February 15, 2015 allegedly carrying two suitcases containing valuables such as gold earrings, gold chain etc. The case of the complainant is that he had noticed some unauthorized persons in the reserved compartment in which he was travelling but since no T.T.E. was available in the compartment, the aforesaid information could not be given to him. This is also the case of the complainant that when the train reached Howrah Station, he noticed that the suitcases which he was carrying with him had been stolen. An FIR was lodged by him at Howrah Station. Alleging the petitioner to be responsible for the theft of his valuables, the complainant approached the concerned district forum by way of a consumer complaint. The contention of the opposite party before the district forum is that during the course of journey, the compartments are mend by the checking staff and in case the complainant had noticed any unauthorized person in the reserved compartment, he ought to have lodged a complaint by sending SMS to the mobile number dedicated by the Indian Railways for this purpose. The district forum having allowed the complaint and having directed the petitioner to pay a sum of Rs.2,00,000/- along with the cost of litigation quantified at Rs.10,000/-, as well as punitive damages quantified at the rate of Rs.200/- per day till compliance of its order, the petitioner approached the concerned state commission by way of an appeal. *Vide* impugned order dated November 21, 2017, the state commission set aside the direction for punitive damages while maintaining the rest of the order passed by the district forum. The state commission, while setting aside the punitive damages, imposed a penalty of Rs.10,000/- upon the petitioner.

15 IBEF, 'Indian Railways Industry', available at :<https://www.ibef.org/industry/indian-railways.aspx>(last visited on July 29,2019).

16 Revision Petition No. 622/2018 (NCDRC).

Being aggrieved from the order passed by the state commission, the petitioner is before this commission by way of this revision petition

The issue was whether the petitioners were deficient in service and whether the respondent had taken the minimal precautions of the theft? The National Commission observed that the respondent did not lock the suitcases with the help of a chain before he went to sleep. This was the least precaution expected from the complainant before he went to sleep since the train was to halt at a number of railway stations between Bhopal and Howrah. It is also found out from the FIR that there is no allegation of any unauthorized person having entered the compartment in which the complainant was travelling. Therefore, it would be difficult to even accept his case that several unauthorized persons had entered the compartment in which he was travelling. In the absence of any proof of negligence on the part of the petitioner, resulting in loss to the respondent solely on account of such negligence, the impugned orders directing payment of compensation to the respondent on account of theft of his belongings cannot be sustained. The impugned order of the state commission and the district forum are therefore set aside and the complaint is consequently dismissed.

V AIRLINES SECTOR

The aviation sector in India is the third largest domestic aviation market in the world, and it is expected to become the world's third largest air passenger market by 2024.¹⁷ As per official statistics and reports, a total of 183.9 million passengers comprised the passenger air traffic and over 22.1 lakh metric tonnes of cargo comprised the cargo traffic for Indian civil aviation market for the period 2017-18.¹⁸ The level of consumer satisfaction differs with different airlines. However, the basic problems faced by the consumers are Cancellation of flights without prior notice; Inordinate delay in flights without any justifiable reason; Denial of boarding due to overbooking; Loss of luggage by the airlines; Poor quality of food and beverages provided in the airlines; Problems in booking of flights or check-in of luggage (Particularly due to e-tickets and web check-in); Delay in getting refunds on fares; Unfair terms and conditions of travel; Misleading/false information being given to the passengers.¹⁹

The Directorate General of Civil Aviation is an office of the Ministry of Civil Aviation, whose main purpose is to regulate the civil aviation sector in India. It must be noted that the priority of the DGCA is to ensure that air travel is safe for passengers.²⁰

17 IBEF, 'Indian Aviation Industry', available at: <https://www.ibef.org/industry/indian-aviation.aspx> (last visited on Nov. 29, 2019).

18 DGVCA, 'Statistics', available at: <http://dgca.nic.in/reports/rep-ind.htm> (last visited on July 29, 2019).

19 Rajiv Singh, 'A blowback in India's booming aviation industry: Surge in consumer complaints' *The Economic Times* Nov 19, 2017. Available at: <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/a-blowback-in-indias-booming-aviation-industry-surge-in-consumer-complaints/articleshow/61705471.cms?from=mdr> (last visited on Nov. 29, 2019).

20 DGCA, 'About DGCA', available at: <http://dgca.nic.in/dgca/dgca-ind.htm> (last visited on July 29, 2019).

Overbooking of flights

In *Air France v. O.P. Srivastava*,²¹ the complainants had booked air tickets with the appellant Air France (OP-1), through an agent (OP-2) for his journey to Paris to attend a business meeting. As per the travel schedule, the departure from Delhi to Paris was on Nov. 6, 2002 and return on Nov. 9, 2002. Due to change in the schedule of the meeting, at Paris, for which the complainants had gone to Paris, they requested for change of date of return journey from Nov. 9, 2002 to Nov. 10, 2002. The complainants were issued three confirmed tickets. However, on Nov. 10, 2002 they were not allowed to board the flight at the airport in Paris due to over boarding as a result of overbooking. The complainants alleged that they were subjected to humiliation and embarrassment by the staff of the appellant airline. Their tickets were also not endorsed to travel by Air India departing on the same day, for which the appellant had provided them confirmed booking. The complainants had to stay at Paris at their own expenses. According to the complainants, since valuable 24 hours were lost, they being Commercially Important Persons, (CIP), in their absence, the schedule of meetings got disturbed, resulting in a monetary loss of 50,00,000 to the Company as consequential business loss. Accordingly, the complainants lodged the complaint before state commission against the appellant for compensating them for the aforesaid loss, harassment and humiliation. The state commission upheld the complaint and awarded 50% of the amount asked for as compensation. The appeal has been filed by the aggrieved respondents before the National Commission. The commission dealt with the legality of the practice of overbooking in flights and opined that the airlines must impose stringent conditions on the eventuality of cancellation of tickets rather than indiscriminately allowing overbooking on flights, this may lead to the development of an unfair trade practice for the purpose of earning profit. Holding that the appellants had committed a deficiency of service, the commission ordered them to pay a lump sum of Rs.4,00,000/- to every appellant for the mental harassment and agony caused to the complainants.

Forcibly taking boarding passes

In *Branch Manager, Indigo Airlines v. Kalpana Rani Debbarma*,²² the Complainant are the family members and were returning from Kolkata to Agartala through the Indigo Airlines and purchased the tickets vide PNR No. IHRNSE. It was stated that the flight was scheduled on January 8, 2017 at 8:45 a.m. and that all complainants reported before the Indigo Airlines Counter at Kolkata Airport and after observing all the formalities the Airlines issued the boarding passes in favour of complainants. It was pleased that airlines left all complaints at Kolkata Airport without informing them despite all complainants being present in Airport premises. A written complaint was lodged at Indigo Office at Kolkata Airport but the office staff as well as the Airport staff at their counter did not accept the complaint application and forcibly snatched away their boarding passes and further did not pay heed to their request for making alternate arrangements for their flight to Agartala. The complaints were forced

21 2018 SCC OnLine NCDRC 548.

22 Revision Petition No.1520 and 1521/2018 (NCDRC).

to return from Kolkata Airport as they did not have sufficient money to purchase fresh tickets and stayed in a hotel room and arranged money for purchasing new tickets to return to Agartala. The complainants led to a lot of mental harassment and inconvenience. Aggrieved by this the complainant issued the legal notice to the Indigo Airlines but received no reply. Constrained by this the complainant approached the district forum seeking directions to Indigo Airlines to pay 16,432 for air tickets; 6338/- for two days of the first and second complainant; 20,000/- for loss of three days studies of the complainant no.3 and amp; 4; 15000/- for cost of two days hotels charges and 2,00,000/- towards mental agony; 1,00,000/- towards compensation and 20,000/- towards costs along with interest and other reliefs. The district forum based on the evidence adduced partly allowed the complaint directing Indigo Airlines to pay 16,432/- which is the cost of the tickets insured by the complainant, hotel expenses of 10,000/- and 10,000/- towards compensation and 5,000/- towards costs. Aggrieved by the said order, both the complainant and Indigo Airline's, preferred appeals before the state commission. The state commission while concurring with the finding of deficiency of service enhanced the compensation to be paid by Indigo Airlines from 10,000/- to 20,000/- while confirming the rest of the order of the district forum. Grieved by the decision, the Indigo Airline's filed this revision petition vehemently contended that the airport manager has stated that there were many announcements at regular intervals and that the Indigo Airlines is not responsible if the passengers did not report at the gate on time. The NCDRC held that Indigo Airlines not only forcibly taking the boarding passes from the complainants, no effort was made by the Airline to compensate them by arranging for their travel in the next scheduled flight to Agartala. It is not in dispute that the complainants were put to lot of mental agony and inconvenience as they had to stay in a hotel for two days and once again travelled by Indigo Airlines after two days on January 10 17 after having had to purchase fresh tickets by spending an amount of 16,432/-. It is even more relevant to note that though both the *fora* below gave a concurrent finding of deficiency of service and the state commission increased the compensation amount from a meagre 10,000/- to 20,000/, Indigo Airlines has chosen to challenge the order by way of this revision petition. The NCDRC dismissed the revision petitions with cost of Rs.20,000/- to be paid to complainants.

VI BANKING SECTOR

As per official reports and statistics, the Indian banking sector comprises 27 public sector bank, 21 private sector banks, 49 foreign banks, 56 regional rural banks, 1 562 urban cooperative banks and 94,384 rural cooperative banks.²³ As per the Global Findex Report 2017 released by the World Bank, 80% of the Indian adult population has a bank account due to the widespread implementation of the Jan Dhan Yojana.²⁴

23 IBEF, 'Banking Sector in India', available at: <https://www.ibef.org/industry/banking-india.aspx>(last visited on July 29, 2019).

24 World Bank (2018), 'The Global Findex Database 2017: Measuring Financial Inclusion and the Fin-tech Revolution', available at: https://globalfindex.worldbank.org/sites/globalfindex/files/2018-04/2017%20Findex%20full%20report_0.pdf (last visited on Dec. 29, 2019).

However, it must be noted that only 29% of the people with bank accounts have performed digital transactions and only 5% have used their bank accounts through the internet or through mobile phones.²⁵ Digital illiteracy and a lack of resources means that the majority of the Indian population still rely on the physical access to banks for availing banking facilities. Government initiatives such as *Digital India* and *Bharat Net Programme* aim at increasing the internet penetration into rural areas for greater use of e-banking.²⁶

Availing of banking services to forward certain documents

In *Metco Export International v. Federal Bank Limited*,²⁷ the complainant Metco Export International is an export company which exported to Italy five containers of sesame seeds. All documents were deposited with OP1, the Federal Bank who had forwarded them to the OP2, the Bank of New York, through OP3, the courier company to be further forwarded to the buyer's bank. However, the buyer did not receive the documents and the documents were lost somewhere in transit. When the complainant contacted the buyer, he came to know about the loss of documents. Due to this the buyer could not take the material and the demurrage charges were levied on the complainant. Later on, the complainant got duplicate papers prepared and got another buyer in Poland, but by that time the international price of sesame seeds had fallen and therefore, he suffered a loss as he sold the items for a lesser price. Moreover, the complainant had to spend for transporting the material from Italy to Poland. The OP1 had also debited his account for commission. Then the complainant filed a consumer complaint before the state commission. The state commission rejected the case on the grounds that the complainant is not a consumer as he was engaged in a commercial activity. Aggrieved by the said order, the complainant filed the instant appeal.

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

Amount of compensation

In *Jitendrakumar Karsandas Ved v. Union Of India*²⁸ Jitendra kumar Karsandas Ved, his wife and daughter opened four MIS accounts with the opposite party. Opposite party forged the signature of the complainant and closed the MIS accounts prematurely

25 *Id.* at 56.

26 Tish Sanghera, '80% of Indians now have a bank account. So why is financial inclusion low?' *Business Standard* (Mumbai, May 17, 2018), available at: https://www.business-standard.com/article/finance/80-of-indians-now-have-a-bank-account-so-why-is-financial-inclusion-low-118051700150_1.html (last visited on July 29, 2019).

27 2018 SCC OnLine NCDRC 1095.

28 Revision Petition No. 2050/2017 (NCDRC).

and transferred Rs.4,73,325/- to a bogus account without knowledge of the complainant. Allegedly there is violation of rules as opposite parties permitted withdrawal by cash, when there is a rule that if payment of more than Rs.20,000/- is to be made, then the same should be made by cheque only. The complainant filed a complaint before the District Consumer Dispute Redressal Forum, Godhra. The district forum allowing the complaint of the complainant passed the order that the opponent no.3 is hereby ordered to pay up Rs.4,80,000/- to the complainants on maturity with 15% interest from February 28, 2012 till realisation. If, the opponent pays up the said amount within 60 days from the date of this order, then from February 28, 2012 to realisation, the opponent shall pay 9% interest on the said amount of Rs.4,80,000/- and Rs.16,000/- towards physical and mental harassment and toward the cost of this application and expenses of hand writing expert. Aggrieved by the order of the district forum, the opposite party preferred the appeal before the state commission. The state commission allowed the appeal and set aside and quashed the order of the district forum but partly allowed the and modified the order of the district forum to the extent that the opposite party no.3 shall pay to the complainants Rs.4,80,000/- with the running interest @6% from 28-02-2012 till the payment and rest of the order towards the compensation and cost is maintained. The National Commission in review petition agreed the contention of the respondent that after the maturity period the amount is paid with the interest payable in the saving bank account and the state commission has already granted 6% p.a. interest, which is more than saving bank rate of interest. Hence, I do not find any merit in the revision petition for enhancing the rate of interest to be paid beyond the maturity date.

VII REAL ESTATE SECTOR

As per official reports and statistics, the Indian real estate sector had a market size of USD 120 billion at the end of 2017, and is expected to reach USD 1 trillion by 2030. It comprises of 4 sectors – housing, retail, commercial and hospitality.²⁹ Increases in income, rapid urbanisation and government policies which focus on growth of commercial industries have led to a huge demand for residential and commercial real estate opportunities.³⁰ The process of buying real estate reveals a lot of uncertainties in the process – the construction will take years to be fulfilled and a substantial amount of money has been invested by the consumer for purchase of their house. Accordingly, the common grievances of consumers with respect to the real estate sector can be divided into two parts *i.e.*, problems faced before construction³¹ and problems faced

29 IBEF, 'Indian Real Estate Industry', available at: <https://www.ibef.org/industry/real-estate-india.aspx> (last visited on Aug. 5 2019).

30 Grant Thornton, 'Indian Real Estate: Annual Handbook 2018', available at: https://www.grantthornton.in/globalassets/1.-memberfirms/india/assets/pdfs/realstate_annual_handbook_2018.pdf (last visited on July 31, 2019).

31 'RERA Does Not Bar Homebuyers Complaint Under Consumer Protection Act Against Builder' (Mondaq, 31 May 2019), available at: <http://www.mondaq.com/india/x/810918/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/RERA+Does+Not+Bar+Homebuyers+Complaint+Under+Consumer+Protection+Act+Against+Builder> (last visited on Dec. 31, 2019).

after construction.³² The problems faced by the consumer may be in the means of false/misleading information being given by the real estate agent; Inordinate and unjustified delay in construction; Delay in allotment and transferring the title of property to the consumer; Charging of additional money due to unfair clauses in the contractual agreement; Delay in payment of compensation if a grievance is recognised by the service provider; Selling of common spaces without permission of the residents or Lack of maintenance of facilities and amenities.

In 2016, the Real Estate (Regulation and Development) Act, 2016 was passed which provided for the establishment of a Real Estate Regulatory Authority by the state governments in their respective states.³³ The purpose of these authorities is to protect the interests of consumers in the real estate sector.

Delay in granting possession

In *Fortune Infrastructure and another v. Trevor D'lima*,³⁴ the appellants, 'Fortune Infrastructure' launched a residential housing project by the name 'Hicons Onyx', renamed as Fortune Residency. The respondents 'Trevor D'lima and others' booked a flat with one unit of parking-space. The total consideration for the flat was Rs. 1,93,00,000/-. It is alleged by the appellants, that due to increase in the cost beyond what was expected, they transferred the project to another company being Zoy Shelcon Pvt. Ltd. Aggrieved by the fact that the appellants were not willing to deliver the flat to them, the respondents approached NCDRC through a consumer complaint. The NCDRC had allowed the complaint and directed the appellants to refund the amount of Rs. 1,87,00,000 within six weeks from the day of the impugned judgment. The appellants were further directed to pay a sum of Rs. 3,65,46,000 as compensation and Rs. 10,000 as cost of litigation to the complainants within six weeks from the day of the impugned judgment. The aforesaid amount was ordered to be paid at 10% per annum from the date of the order till the actual date of payment. Further the review against the aforesaid order was also dismissed by the NCDRC. Aggrieved by the decision of the NCDRC, this appeal before Supreme Court was filed. Supreme Court observed that time period of three years would have been reasonable for completion of the contract. As the respondents were made to wait indefinitely for the possession of the flats and there were no valid reasons for the transfer of the property to a third party, Supreme Court was drawn to an irresistible conclusion that there was deficiency of service on the part of the appellants. Accordingly, the appellants were directed by the Supreme Court to refund the amount of Rs. 1,87,00,000 which they had received from the complainants, to pay a sum of Rs. 2,27,20,000 as compensation, a sum of Rs. 20,00,000 as compensation for one unit of parking lot and Rs. 10,000 as the cost of litigation to the complainants.

32 Devesh Chandra Srivastava, 'Consumer courts can help in real estate issues too' *LiveMint* (24 February 2011), available at: <https://www.livemint.com/Money/cNffrEBMFKapfhwjk0AipM/Consumer-courts-can-help-in-real-estate-issues-too.html> (last visited on Dec. 31, 2019).

33 Real Estate (Regulation and Development) Act 2016, s. 20.

34 (2018) 5 SCC 442.

In *Supertech v. Rajani Goyal*³⁵ the appellant was developing a project named 'Capetown' in sector 74, Noida. The respondent booked a residential flat with the appellant in the said project. On May 22, 2012, the appellant *vide* allotment letter allotted flat no. 1606 to the Respondent. As per the allotment letter, possession would be handed over in October 2013. This period could be extended due to unforeseen circumstances by a maximum of 6 months. The agreement also provided for escalation charges if there was any fluctuation in the price of construction materials and/or labour costs during the course of construction, payable by the respondent. The agreement provided for payment of maintenance charges by the Respondent for maintenance and upkeep of the complex. These maintenance charges were payable from the date of issuance of a 'Letter of Offer of Possession'. The appellant was not able to hand over possession of the flat in October 2013 as per the allotment letter dated May 22, 2012. The appellant issued a pre-possession letter on October 12, 2015 to the respondent for completion of formalities, before possession could be handed over. The pre-possession letter stated that upon completion of formalities as specified in the letter, possession of the flat would be offered to the respondent. The respondent was called upon to pay Rs. 12,35,656/- towards the balance cost of the flat, maintenance charges, labour welfare charges, water connection charges, escalation costs, etc. The respondent was called upon to deposit the charges on or before November 11, 2015. The respondent failed to pay the charges demanded as per the pre-possession letter by the appellant. That after over 15 months, on March 15, 2017, the respondent-purchaser filed a consumer complaint under section 21(a)(i) of the Consumer Protection Act, 1986 before the National Consumer Disputes Redressal Commission. The respondent challenged the pre-possession letter on the ground that on the date of issuance of the pre-possession letter, the appellant had not obtained the occupancy certificate. The respondent also challenged the various charges demanded by the appellant in the pre-possession letter. The commission *vide* judgment and order dated February 7 2018, partly allowed the consumer complaint of the respondent. The commission held that out of the charges mentioned in the pre- possession letter dated October 12, 2015 the appellant was entitled to payment of the following amount of Rs. 3,166/- towards interest on delayed payment and in regard to the amount of water connection charges and labour welfare charges if paid to the concerned authority, on proportionate basis subject to furnishing proof of such payment, in terms of this order and escalation charges along with service tax amounting to Rs. 3,88,797.19/-. It further held that since there was a delay in handing over possession of the flat to the respondent, the appellant was liable to pay interest to the respondent by way of compensation. It directed the appellant to pay compensation in the form of simple interest @ 8% p.a. from November 1, 2013 till date on which possession was actually offered to the respondent.

Aggrieved by the order, the appellant filed review petition before the National Commission. The said review petition is also dismissed aggrieved by the decision appellant has preferred the present civil appeal before this court under section 23 of the Consumer Protection Act. The Supreme Court observed that even though the

35 2018 SCC Online SC 2114.

Agreement provided for delivery of possession by October 31, 2013, the delay occurred because of various legal impediments in timely completion of the project because of various orders passed by the National Green Tribunal. The delay ought to be computed from 6 months after October 31, 2013, *i.e.*, from January 5, 2014 by taking into consideration, the 6 months grace period provided in the Agreement. Furthermore, the period of Interest should close on April 2016 when the Full occupancy certificate was obtained as per the admission of the respondent wherein she has admitted that the appellant- had obtained the completion certificate in April 2016. The respondent could not have any further grievance after April 2016 with respect to delay in handing over possession. The respondent ought not to be allowed to reap the benefits of her own delay in taking possession. In light of the aforesaid discussion, the Supreme Court upheld the decision on modifying the period of compensation of interest must be computed from May 1, 2014 till April 30, 2016 at the rate awarded by the commission and disposed the appeal.

Whether beneficiary on transfer of allotment of flat is a consumer under Consumer Protection Act 1986

In *CCI Project (P) Ltd. v. Vrajendra Jogjivandas Thakkar*,³⁶ Vrajendra J. Thakkar and Hemali Vrajendra Thakkar had booked the two residential flats in their respective names with the appellant in a project named “White Spring Building” which the appellant was to construct at Magathane village Dattapada Road, Borivali (East), Mumbai for a consideration amount of Rs.90,38,850/- each. Flat No.6A is allotted to Vrajendra and Flat No.6B is allotted to Hemali. The parties entered into agreement dated October 30, 2012 and in terms of the agreement the possession of the flats was to be delivered by August, 2014. Thereafter Both Vrajendra and Hemali transferred the allotment in favour of Kumudben Jagjivandas Thakkar. Kumudben Further gifted the very same Apartment to the present Respondent. On 02/06/2016 the aforesaid consumer filed a complaint before the National Consumer Dispute Redressal Commission contending that though the sum of Rs.85,86,911/- had been deposited in respect of each of the flats, no possession was delivered by the appellant. The appellant resisted the complaint and submitted that the construction activity had begun obtaining requisite permission and however New Development Control Rules notified in 2012 obliged the builder to prefer fresh application in that behalf and additionally there for more than 24 months there was a restriction on sand mining activity as a result of which is the basic raw material for the construction of building. Further the appellant contended before the commission that the respondent are default of Rs.1,04,207/- in respect of each flats. During the pendency of the matter before the commission the possession of the aforesaid flats was offered by the appellant *vide* letter dated November 16, 2016. The Commission directed the complainants to deposit the sum with the commission and handover the possession. The commission rejected the contention of the appellant in respect of the NOC granted and regarding the non-availability of the sand by observing that no documents had been placed on record to substantiate it. The commission observed that the sums of Rs.1,04,207/- which the appellant sought

36 2018 SCC Online SC 2564.

to recover were not disputed by the complainants and disposed the complaint with direction to refund the amount deposited along with interest by the complainant with the commission and the opposite party shall pay a compensation in the form of simple interest @8% per annum on the amount which had been paid by that date, to the complainant till the date on which the possession was handed over and Rs.25,000/- as cost of litigation is to be paid to the complainant. Aggrieved by the decision of the National Commission, the appellant has approached before this Supreme Court of India under section 23 of the Consumer Protection Act, 1986 on the ground that the original allottees had transferred their interest and the time lost on account of mandatory requirement for re-submission of plans, be extended.

The Supreme Court held that the transfers effected by the parties were within the family. It also justified that as a result of mandatory requirement to resubmit the plan and get the fresh NOC in respect of the fire safety permission the appellant was entitled for the extension of six months and it is also observed that there was no complete ban of the sand mining. Considering the entirety of the matter the Supreme Court upheld the decision of the National Commission in respect of the direction no.1, 2, and amp; 4 where as in respect to direction no.3 the appellant would be required to pay a lump sum compensation of Rs. 5 lakhs to the respondent in respect of each case. We direct that all the sums covered by the directions shall be made over within two months from today failing which the respondent complainant shall be entitled to 8% interest on the amounts in question.

Failure to provide basic infrastructure

In *Unnayan Builders Private Limited, through their Managing Director, Kolkata v. Sona Bera W/o Arnab Bera*,³⁷ the complainant Sona Bera W/o Arnab Bera entered into an agreement with the OP Unnayan Builders Private Limited (petitioner) for purchasing a residential plot. The OP-petitioner was required to provide the basic infrastructure while delivering possession of the plot booked in a project namely 'Unnayan Garden' for a consideration of Rs.16,50,000. As per the terms of the agreement, the OP was to develop the plot within a period of four years. The OP having failed to carry out the requisite development by that date, the complainant approached the concerned district forum by way of a consumer complaint, seeking refund of the amount paid by him, along with compensation. The complaint was resisted by the OP primarily on the ground that the complainant had defaulted in payment of the balance instalments and therefore the complaint was liable to be dismissed. The district forum having ruled in favour of the complainant, the petitioner (OP) approached the concerned state commission by way of an appeal. The said appeal also having been dismissed, the petitioner (OP) filed a revision petition before the National Commission. The issue was whether there was deficiency of service on part of the opposite party? The petitioners contended that the agreement was not one of service but a contract of sale of a plot alone. Petitioners also argued that the agreement was liable to be set aside as the complainant had not paid the balance instalment.

37 2018 SCC OnLine NCDRC 1012.

The National Commission observed that the non-payment of balance instalment was condoned by the opposite party and they had in fact not terminated the agreement. Thus, the agreement still stands. The Commission opined that the petitioners had to build some basic infrastructure before handing over the plot to the complainant. Thus, there was an element of service present in the agreement between the complainant and the opposite party and they were deficient in providing the service. On the basis of the above discussion, the revision petition was dismissed.

VIII ELECTRICITY SECTOR

As per official statistics and reports, India has a national electricity grid with a capacity of 357.875 GW.³⁸ In the period from 2017-18, the gross electricity consumption was 1149 kWh per capita³⁹. Increasing population and government policies aimed at increasing the number of electricity connections in India, such as the DDUGJY⁴⁰ mean that the number of people who require electricity will rise rapidly.⁴¹ The National Electricity Policy 2005⁴² and the National Electricity Plan 2018⁴³ lay out the common grievances of consumers with regards to the electricity sector are, Delay in sanctioning of a new connection; Problems in supply of electricity; Erratic voltage fluctuations; Delay in repairs and restoration of power supply; Delay in reconnection following disconnection; Delay in shifting of connection lines; or Problems in the electricity meter.⁴⁴

In *Chhattisgarh State Power Distribution Co. Ltd. V. Mukesh Kumar Satnami*,⁴⁵ A regular domestic electric connection was given to the house of Firtu Ram Lahre in village Kenapali against BP Number 1003531960 by the Chhattisgarh State Power Distribution Co. Ltd (Petitioner). Rukhmani Bai wife of Mukesh Satnami is a consumer of the said electricity. The respondent had registered the complaint dated 18.05.2015 stated that the neutral wire transmitted by the petitioner to their house had been broken. He duly informed the department of this fact. The electricity department however, did not pay any heed to his complaint. On May 19, 2015, wife of Firtu Ram Lahre switched

38 Central Electric Authority, 'All India Installed Capacity (In MW) Of Power Stations', available at: http://www.cea.nic.in/reports/monthly/installedcapacity/2019/installed_capacity-06.pdf (last visited on Dec. 31, 2019).

39 Central Electric Authority, 'Growth of Electricity Sector in India from 1947-2018', available at: http://www.cea.nic.in/reports/others/planning/pdm/growth_2018.pdf (last visited on Dec. 31, 2019).

40 Ministry of Power, 'Status of Rural Electrification (RE) under DDUGJY', available at: <https://powermin.nic.in/en/content/overview-1> (last visited on Dec. 31, 2019).

41 Bhasker Tripathi, 'Now, India is the third largest electricity producer ahead of Russia, Japan' *Business Standard* (Mar 26, 2018), available at: https://www.business-standard.com/article/economy-policy/now-india-is-the-third-largest-electricity-producer-ahead-of-russia-japan-118032600086_1.html (last visited on Dec. 31, 2019).

42 National Electric Policy 2005.

43 National Electric Plan 2018.

44 Suresh Misra and S.K. Virmani, 'Electricity and Consumer: Consumer Education Monograph Series 22' [2016] 34, available at: <http://www.consumereducation.in/monographs/Electricity%20and%20Consumer.pdf> (last visited on Dec. 31, 2019).

45 Revision Petition No. 2225 /2017 (NCDRC).

on the cooler at about 12.00 noon and due to the electric current flowing through it she got electrocuted due to the electric current which was leaking in the cooler which was due to the snapping of the neutral wire she become unconscious and was immediately taken to the hospital but she was declared brought dead in the hospital. A police complaint was lodged with PS Kharsia and the post mortem report was also got done. In the post mortem report the cause of the death was death due to electric current. The husband and her children has alleged that there was a deficiency in service on the part of the petitioner and claimed a compensation to the tune of Rs.16,77,000/- along with litigation expenses before the district forum. The district forum allowed the complaint rejecting the contention of the petitioner that respondents have never informed about the breaking of the neutral wire to the department and the documents to this effect was forged and fabricated and directing the petitioner to pay

amount of Rs.5,58,000/-on account of compensation due to deficiency in service to the complainant within a period of 30 days; interest at the rate of 9% per annum with effect from the date of institution of complainant and Rs.2000/- to the complainant within a period of one month. Aggrieved by the decision of the district forum the petitioner appealed before the state commission. The state commission dismissed the appeal on March 1, 2017 and held thatthere was a deficiency in service. Hence, the present revision petition has been filed against the judgment dated March 1, 2017 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur. The revision petition filed before the National Commission is devoid of the merits, and hereby dismissed the petition as the consumer had duly informed the petitioner about the snapping of the neutral wire and the current flowing in the domestic appliances including cooler. Even rule 5.5 cast duty upon the licensor department to do repairs and no other person is permitted to carry out any repair. Rule 5.6 states that the department shall ensure continuity of the supply of electrical energy to the consumer.

Charging excess amount

In *Proton Steels Limited, Odisha v. Superintending Engineer, Electrical, Orissa State Electricity Board*,⁴⁶ the Proton Steels Ltd. is a small scale industry. Its plant was being supplied electricity by the Odisha State Electricity Board, the OP with a sanctioned load of 445 KVA. Since the electric meter of the complainant was not working since November, 1993, average bills were being raised and paid regularly. In the months of August/September, 1994, the complainant company was required to suspend its production for the purpose of overhauling and major maintenance of its plant. Accordingly, vide its letter dated July 30, 1994, the complainant intimated to the opposite party that it would be using load of 15 KVA between the period August 1, 1994 to September 15, 1994. When the complainant received the bill for the month of August, 1994, the same was found to be on average basis, as in the preceding months, without taking into consideration the fact that production in its plant was suspended during the aforesaid period. On protest, the opposite party started verifying the production details with the electricity bill supplied. In the meanwhile, the complainant company continued to pay the bills issued to it except the bills in question.

46 2018 SCC OnLine NCDRC 174.

With no positive response about the bills that were questioned and the threat of the electricity supply being disconnected, the complainant filed a complaint before the district forum. The district forum, on appraisal of evidence, directed the opposite party to raise a bill for the suspended load. Aggrieved by the same, the opposite party appealed to the state commission. Since the intimation given to the opposite party was not seven days prior to the period of suspension of load, the state commission decided the appeal in favour of the opposite party. Aggrieved by the same, the present revision petition was filed by the complainants.

The issue in this case was whether there is deficiency of service on part of the respondents for raising a bill for a load higher than the amount that was used? The National Commission observed that the state commission had erroneously considered the condition of seven days prior notice from regulations that were published in the Gazette in 1995 while the present bills were issued in 1994. Moreover, as per Industrial Policy of 1989 which is attracted in the present case, an industrial unit, covered under the policy, will be liable to pay the electricity charges on the basis of actual monthly consumption of energy and no minimum charges will be levied in respect of the industrial units. National Commission dismissed the state commission's order and directed the opposite party to raise a new bill for the suspended load and to refund the excess amount and surcharge that was paid by the complainant.

IX EDUCATION SECTOR

The Eighty Sixth Amendment 2002 inserted article 21A in the Indian Constitution⁴⁷, which meant that there was a fundamental right to education available to all children aged between 6-14. As per the seventh All India School Education Survey, there were 12.29 crore students enrolled in primary education,⁴⁸ 2.18 crore students enrolled in secondary education⁴⁹ and 1.14 crore students enrolled in higher secondary education.⁵⁰ With regards to infrastructure, there are around 15.22 lakh schools all over India,⁵¹ 799 universities, 39,071 colleges and 11,923 standalone institutions for higher education.⁵² With regards to the personnel, there are around 58.16 lakh teachers at the primary school level and 21.27 lakh teachers at the secondary school level.⁵³ Every person recognises the value of education, which is why that

47 The Constitution (Eighty-Sixth Amendment) Act 2002.

48 NCERT, '7th All India School Education Survey: Enrolment in Schools' [2005] 10, available at: http://www.ncert.nic.in/programmes/education_survey/pdfs/Enrolment_in_school.pdf (last visited on Dec. 31, 2019).

49 *Id.* at 11.

50 *Supra* note 12 at 225.

51 Ministry of Statistics and Programme Implementation, 'Education – Statistical Year Book India 2017: Table 29.1', available at: <http://mospi.nic.in/statistical-year-book-india/2017/198> (last visited on Dec. 31, 2019).

52 Ministry of Human Resource Development, 'All India Survey on Higher Education: 2015-16' [2016] 3, available at: https://mhrd.gov.in/sites/upload_files/mhrd/files/statistics-new/AISHE2015-16.pdf (last visited on Dec. 31, 2019).

53 'State/UT-wise Number of Teachers in Educational Institutions upto 2015-16', available at: <https://data.gov.in/resources/state-ut-wise-number-teachers-educational-institutions-upto-2015-16> (last visited on Dec. 31, 2019).

expenditure on education is a priority. As per the 68th NSSO Report, 66% and 76% of rural and urban households respectively reported an expenditure of 3.5% and 7% of the monthly personal consumption expenditure respectively on primary education per person per month.⁵⁴

Refund of amount deposited during admission

In case of *Registrar, Guru Gobind Singh Indraprastha University v. Arun Kumar*,⁵⁵ Arun Kumar took admission in B.Tech Course of the Guru Gobind Singh Indraprastha University in the academic year 2010-11 depositing a sum of Rs.53,000/- vide receipt dated August 3, 2010. As per the counselling schedule notified by the university, the admission could be withdrawn latest up to August 27, 2010, though the classes were to commence on August 2, 2010 and all the students taking admission during the first counselling were to report to their respective college/institution on August 2, 2010 or on the date following the day of admission, in case the admission was granted after August 2, 2010. Arun Kumar, who had been given admission in Guru Premsukh Memorial College of Engineering, did not report to the said college nor did he deposit the fee at the said college till November 30, 2010. Vide letter dated April 30, 2012, the aforesaid college sought cancellation of the aforesaid student. Admission was accordingly cancelled on May 2, 2012. The amount deposited by the complainant having not been refunded, he approached the concerned district forum by way of a consumer complaint seeking refund of the said amount. The district forum directed the university to refund the entire amount deposited by the complainant after deducting a processing fee of Rs.1,000/-. A sum of Rs.5,000/- was awarded as compensation to the complainant along with another sum of Rs.5,000/- as the cost of litigation. Being aggrieved from the order passed by the district forum, the petitioner university approached the concerned state commission by way of an appeal. The said appeal having been dismissed, the petitioner is before this Commission.

The issue in this case was whether the University is liable to refund the amount deposited by the complainant?

The National Commission observed that the whole of the case of the complainant is based upon a circular dated 23.04.2007 issued by University Grants Commission that the entire amount collected from the student was required to be refunded after deducting a sum of Rs.1,000/- in a case where the student withdrew from the programme. In the event of the student leaving after joining the course and the seat so vacated by him being filled by another candidate by the last date of admission, the university was to return the fee collected from him with proportionate deduction of monthly fee and proportionate hostel fee wherever applicable. The purpose of aforesaid circular in my view is not to allow unjust enrichment of the institution/university where a student withdraws from the programme, provided that he withdraws from the programme by the last date stipulated for this purpose or before the date scheduled

54 National Sample Survey Office, 'Report No. 558: Household Consumption of Various Goods and Services in India 2011-12' [2014] 32, available at: http://mospi.nic.in/sites/default/files/publication_reports/Report_no558_rou68_30june14.pdf (last visited on July 31, 2019).

55 Revision Petition No. 1783/2016 (NCDRC).

for joining the course. However, if the seat so vacated by such a student remains vacant on account of late withdrawal of admission by him, the university, in my view, is not required to refund the amount deposited by him. Asking the university to refund the said amount would neither be fair nor reasonable in such an eventuality. In light of the above the National Commission set aside the impugned orders and accordingly dismissed the complaint with no orders as to costs.

Failure to disclose information in prospectus

In *Director, Vels Group of Maritime College v. Lovish Prakash Guldcohar*,⁵⁶ the Vels Group Of Maritime College was engaged in offering several courses including Higher National Diploma in Nautical Science. The complainant took admission in the aforesaid course and completed the same in 2005-2007. The grievance of the complainant is that though the said course had not been approved by the Government of India, the aforesaid information was not disclosed in the prospectus issued by the petitioner. Since on completion of the course, the complainant did not get the Continuous Discharge Certificate (CDC) from the government, despite having completed the above referred course, on account of the approval of Director General of shipping having not been obtained by the petitioner, he approached the concerned district forum by way of a consumer complaint, seeking compensation *etc.* The contention of the respondents is that the petitioner which took a preliminary objection is barred by limitation, and it was also alleged that on completion of the course by the complainant, he was provided the requisite certificate namely Higher National Diploma in Nautical Science (HND-NS). This was also the case of the petitioner that the aforesaid diploma had been approved by Maritime Education and Training (VAMET) UK and the said information was duly disclosed in the prospectus. The district forum having allowed the complaint and having directed the petitioner to refund the amount of Rs.8,50,000/- which the complainant had paid to it along with compensation quantified at Rs.50,000/- and the cost of litigation quantified at Rs.20,000/-, the petitioner approached the concerned state commission by way of an appeal. The said appeal also having been dismissed, the petitioner is before this commission.

The National Commission observed that a correct and purposive interpretation of the miscellaneous notice December 3, 2003, it required not only to a new course but also to a new batch of an existing course offered by a training institute should necessarily obtain the prior approval from the Director General of Shipping before commencement of the training courses. It also observed the reply given by the Government of India under Right to Information Act, 2005 that no student, who has completed higher national Diploma in Nautical Science from Vels College of Maritime Studies, Chennai is entitled to get Indian CDC from your office, as Vels College of Marine Studies Chennai has not obtain prior approval from the Director General of Shipping before commencement of the training course affiliated to Foreign marine Administration. As the Rule5(4) of the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's identity Document) Rules, 2001 lays down the procedure to obtain the Indian CDC which read as- A citizen of India who is in possession of a

56 Revision Petition No. 1895/2018 (NCDRC).

valid certificate of competency issued by any foreign nation is eligible to request for issue of a CDC. It is therefore, evident that the complainant was not entitled to get Indian CDC from Directorate General of Shipping since no approval from the said directorate had been taken in respect of the batch in which admission was taken by the complainant. The national Commission dismissed the revision petition of the petitioner and held that the petitioner was deficient rendering services by not obtaining the prior approval of the Directorate General of Shipping or at least by not disclosing MS Notice no. 27 dated 03.12.2003 in the prospectus issued after December 3, 2003.

X INSURANCE SECTOR

As per official reports and statistics, the Indian insurance sector consists of 68 insurance companies, out of which 24 provide life insurance, 27 provide general insurance, 6 provide health insurance and the remaining 11 are re-insurers.⁵⁷ The gross premiums written in India amounted to Rs. 5.53 trillion out of which Rs. 4.58 trillion were generated through life insurance and Rs. 1.51 trillion were generated through other insurances.⁵⁸ Insurance is necessary for consumers as it provides them with protection from any unexpected financial loss as it provides them with the means to recover from such a loss. As a result, consumer grievances such as False/misleading information about the insurance plan and the policy; Unfair terms of insurance; Rejection of genuine claims without reason; Delay in grant of compensation upon acceptance of claim; Non-payment of entire amount of claim; Charging of extra premium; Wrongful cancellation of policy must be addressed⁵⁹ Following the recommendations of the Malhotra Committee Report in 1999,⁶⁰ the Insurance Regulatory and Development Authority of India was established by the Insurance and Regulatory Authority of India Act 1999.⁶¹

Repudiation of claim

In *Compaq International v. Bajaj Allianz General Insurance Company Limited*⁶² Balwant Singh was driving a motorcycle with Suresh Kumar as a pillion rider when it met with an accident with the offending vehicle, owned by Compaq International (complainant) which was being driven by Nirmal Singh, insured with Bajaj Allianz General Insurance Company Limited (OP). Both the driver and the pillion of the motorcycle suffered injuries. Two claim petitions were filed. The two separate claim

57 IRDAI, 'Annual Report 2017-18' [2018] 7, available at: https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/english_hindi_annual%20report%202018%20webcopy.pdf (last visited on July 31, 2019).

58 IBEF, 'Indian Insurance Industry Overview and Market Development Analysis', available at: <https://www.ibef.org/industry/insurance-sector-india.aspx> (last visited on July 31, 2019).

59 Prajog Dutta and Harshit Singh Jadoun, 'Consumer Protection in Banking and Insurance: A Comparative Study of the Laws between India and the West' Available at: https://www.academia.edu/15099398/Consumer_Protection_in_Banking_and_Insurance_A_Comparative_Study_of_the_Laws_between_India_and_the_West (last visited on July 31, 2019).

60 IRDAI, 'History of insurance in India', available at: https://www.irdai.gov.in/ADMINCMS/cms/NormalData_Layout.aspx?page=PageNo4&mid=2 (last visited on Dec. 31, 2019).

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

62 (2018) 6 SCC 342 .

petitions were tried together and certain amounts were awarded to both the injured. Since contributory negligence was found to be 50 per cent, the amount determined was reduced by 50 per cent to award the aforesaid amounts. All the respondents which included the owner, driver and the insurance company were made jointly and severally liable. Controversy arose when as per information obtained from the licence clerk from the registering authority, the licence was not valid on the date of the accident. The insurance company, thus, sought to absolve itself of the liability. The High Court of Punjab and Haryana ordered that the insurance company could recover the amount from the owner and the driver. Aggrieved by the order, the owner and the driver have filed this appeal. A complaint was filed under section 12 of the Consumer Protection Act, 1986 by Compaq International, owner of the vehicle against the insurance company, Bajaj Allianz General Insurance Company Limited and the Licensing Authority. Negligence is attributed to the services rendered by the respondents as the accident claim had not been paid. The registering authority was also roped in as a party on account of the stand sought to be taken that the driving licence was valid till 2003 while the accident happened on November 12, 2005. However, the validity period as per the driving licence was April 29, 2011. Post-trial this complaint was allowed and a sum of Rs. 55,887/- was awarded to Compaq International along with interest and costs. The insurance company preferred an appeal before the state consumer dispute redressal commission, which was allowed on the basis of a finding that the driver had not applied for renewal of driving licence within a period of 30 days from the date of expiry and, thus, did not hold a valid driving licence on the relevant date. The appellant aggrieved by this order preferred a revision petition before the National Consumer Disputes Redressal Commission, which agreed with the findings of the state commission and, in fact, went further to even observe that the licence was apparently a forged one. Hence, this SLP was filed. The court observed that the driving licence was issued on February 27, 1998 which recorded the date of birth as April 30, 1961 and the validity date given in the driving licence was April 29, 2011. Section 14(2)(b) of the Motor Vehicles Act states that a licence which is originally issued or issued on renewal would be effective for a period of 20 years or until the person obtaining such licence attains the age of 50 years, whichever is earlier. The driving licence was issued on February 27, 1998. Since the date of birth of the driver, Nirmal Singh was recorded in the licence itself as April 30, 1961, he would have attained the age of 50 years on April 30, 2011. Thus, the licence issued was valid up to April 29, 2011. In terms of the Motor Vehicles Act, once a person attains the age of 50 years, the licence is renewed for a period of five years from the date of such issue or renewal. The renewed licence issued to the petitioner is valid for a period of five years from 2011 to 2016 for the "LMV-NT-Car Only" category of vehicles. This licence was subsequently converted into a licence both for LMV and Transport vehicle, a copy of which licence was also produced. The validity of this licence is from 2016 to 2018.

The Supreme Court was of the view that the lower court clearly fell into an error in doubting that the licence was valid on the date of the accident. Thus, the appeal was allowed. The orders of both the state commission and the National Commission were set aside and the civil appeal no. 2540 of 2018 was remitted to the

state commission to be decided in accordance with law in view of the court's judgment in civil appeal nos.2538-2539 of 2018.

Lift given to passengers

In *Manjeet Singh v. National Insurance Company Ltd.*,⁶³ Manjeet Singh purchased a Tata open truck under a hire purchase agreement dated October 13, 2003 for a sum of Rs. 8,57,000/-. The vehicle was hypothecated in favour of Respondent No. 2 Finance Company. It was insured for a value of Rs. 7,28,000/- for the period of September 25, 2004 to September 24, 2005 from the respondent-1 National Insurance Company. On December 12 2004, when the vehicle was being driven by the driver of complainant on the National Highway some persons requested the driver through hand signal to give them lift. Since it was a cold wintery night, the driver gave lift to these persons. After a little while, one of the passengers requested the driver to stop the truck saying he had to answer the call of nature. When the truck was stopped, the three passengers assaulted the driver, tied his hands and legs with a rope and threw him in a nearby field and fled away with the vehicle. A FIR was lodged in police station on December 13, 2004 and the finance company(R-2) was intimated about the theft. The complainant had also given a letter of authority to the finance company to negotiate and settle the claim with the insurance company. However, no settlement was arrived at and the claim was repudiated on the ground of breach of terms of the policy. The owner-complainant filed a consumer complaint before district forum against insurance company for compensation of loss caused due to repudiation of insurance claim. The main defence taken by the insurance company was that the driver of the vehicle, by giving a lift to the passengers, had violated the terms of the policy and it was breach of policy hence insurance company was not liable. The district forum rejected the claim of the complainant, the appeal filed by him before the state commission and national commission were also rejected. Hence the revision petition was filed before Supreme Court.

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

63 (2018) 2 SCC 108.

Failure to inform about rejection of insurance within reasonable time

In *D. Srinivas v. SBI Life Insurance Company Limited*,⁶⁴ the complainant-appellant D. Srinivas along with his wife, and son D. Venugopal, obtained a housing loan of Rs.30,00,000 for construction of their house. A sum of Rs.78,150 was debited from their loan account towards SBI Life Insurance Cover under Group Insurance Scheme for home loan borrowers, through master policy holder i.e. State Bank of Hyderabad, covering the life of D. Venugopal, who was one of the joint loanees. The proposal form was accompanied by good health declaration by the insured, D. Venugopal who expired due to a massive heart attack. Consequently, the said life insurance obtained in his name came into force, obligating the insurer, the opposite party 1 herein, to pay the outstanding amount in their loan account. The appellant approached the insurer and the bank informing them about the demise of D. Venugopal and requested them to settle the insurance claim and to discharge the outstanding loan amount in their house loan account. Since the insurer did not accede to his request, the appellant filed a consumer complaint before the state commission. The insurer denied his liability contending that the proposal for the policy was not accepted as the insured did not present him for medical examination in spite of repeated requests. The state commission allowed the complaint. Aggrieved by the same, the opposite party filed an appeal before the National Commission. The National Commission dismissed the complaint. Aggrieved by this, the complainants appealed before the Supreme Court.

The Supreme Court opined that the rejection of the policy must be made in a reasonable time so as to be fair and in consonance with the good faith standards. In this case, the enormous delay to reject the policy was not excusable. Moreover, it was borne from the records that the premium was only re-paid after a delay of more than one year, five months. In the light of this, the Supreme Court upheld the decision of the state commission and set aside the decision of the National Commission, ordering the opposite party to honour its policy.

Concealment of facts by complainant

In *Gulab Singh v. HDFC Standard Life Insurance Co. Ltd.*⁶⁵ the Uncle of the Petitioner (Late Shri Balbir Singh) obtained an insurance policy from the respondent HDFC Standard Life Insurance Co.Ltd.,on August10, 2013 for a sum of Rs.11.00 Lacs. He died just after one month after purchasing the policy. The complainant claim for the payment of benefit available under the insurance policy. The claim was however repudiated vide letter dated September16, 2014 on the ground that “The proposal accepted on the personal information provided in the proposal and the policy was issued in August 10,2013, in which the assured had declared his birth as August 1, 1965 i.e., aged about 48 years and had produced the PAN card as proof. However, through the investigations we had established that the correct age of the assured is 68 years at the time of death and the date of birth declared by him was false hence the contract of insurance is void ab initio.” Being aggrieved by this the petitioner file a

64 (2018)3 SCC 653.

65 Revision Petition No. 3142/2018 (NCDRC).

consumer complaint before the district forum. The district forum dismissed the complaint; aggrieved by the decision of district court the complainant approached the state commission by way of appeal. The said appeal was also dismissed and he is before this commission by way of revision petition.

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

XI HOTELS & RESTAURANTS

As per official reports and statistics, the tourism and hospitality sector in India was worth 15.24 trillion dollars in 2017 and it is expected to be worth dollars 32.05 trillion in 2028.⁶⁶ This is because of the diverse tourist destinations in India – cultural, religious and spiritual, eco-tourism, medical etc. and government initiatives such as Incredible India which promote India as a tourist destination⁶⁷, Swadesh Darshan and PRASHAD for analysing the funds and adherence to schemes⁶⁸ and the ‘Adopt a Heritage’ project for development of heritage sites⁶⁹ A crucial component of the tourism and hospitality sector are hotels and restaurants. As per the India Tourism Statistics 2018, there were around 1784 approved hotels and 9,11,197 hotel rooms in 2017.⁷⁰

Responsibility of hotel to vehicles in the parking lot

In *Taj Mahal Hotel, New Delhi v. United India Insurance Company Limited, New Delhi*,⁷¹ the second complainant, the car owner insured his car with the first complainant United India Insurance Company Limited. The car owner reached the first OP1, Hotel Taj and parked his car at the porch. He gave the car keys to the concerned parking man, received a parking slip from him, went inside the restaurant

66 IBEF, ‘Indian Tourism and Hospitality Industry Analysis’, available at: <https://www.ibef.org/industry/indian-tourism-and-hospitality-industry-analysis-presentation> (last visited on Nov. 2, 2019).

67 Incredible India, available at: <https://www.incredibleindia.org/content/incredibleindia/en.html> (last visited on Aug. 2, 2019).

68 Press Information Bureau, ‘Foreign Tourist Arrivals in the country’ (July 9, 2019), available at: <http://pib.nic.in/newsite/pmreleases.aspx?mincode=36> (last visited on Dec. 2, 2019).

69 Adopt A Heritage. Available at: <https://www.adoptaheritage.in/> (last visited on Aug. 2, 2019).

70 Ministry of Tourism, ‘India Tourism Statistics 2018’ 112 Available at: <http://tourism.gov.in/sites/default/files/Other/India%20Tourism%20Statistics%202018.pdf> (last visited on Aug. 2, 2019).

71 2018 SCC OnLine NCDRC 408.

for having dinner and returned after the meal. On asking for the keys of the vehicle, he was informed by the officer on duty at the parking lot that his vehicle was driven away by some unknown person. He immediately rushed to the security room of the hotel and contacted the security officer, who reported to him about the theft of the vehicle. It was stated by the Hotel staff that despite efforts by the Hotel guard, the car sped away. The hotel lodged a complaint at the police station but the police had given a report stating that the car was untraceable. A surveyor was appointed by the insurance company who settled the claim for 2,80,000 vide a cheque. The hotel was requested to compensate for the loss, but they refused to do so. The car owner approached the state commission calling upon the hotel to pay compensation. The state commission upheld the complaint and directed the OP1 to pay the compensation amount to the car owner. Aggrieved by this, the opposite parties filed an appeal before the National Commission.

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

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

XII POSTAL SECTOR

The postal sector in India has been incurring losses ever since the rise of electronic forms of communication. From a deficit of Rs. 6007 crore in 2016, the deficit has grown to Rs. 15,000 crore in 2019.⁷² Despite these losses, it provides a valuable service to many people – the postal savings bank account, national savings certificate, postal life insurance, payment of bills, time deposits, couriers and letters etc.⁷³

Condonation of delay in filing application

In *Post Master, Deesa Post Office v. Parvatiben Arjanbhai Prajapati*,⁷⁴ The Complainants had opened the opened recurring deposit accounts with Deesa Post Office at Deesa in District Banaskantha of Gujarat. They made deposits in the said accounts from time to time. Their grievance is that the money which they had deposited

72 'India Post losses touch Rs 15,000 crore in FY19, replaces Air India, BSNL as biggest loss-making PSU' *Business Today* (15 April 2019), available at: <https://www.businesstoday.in/sectors/psu/india-post-losses-touch-rs-15000-crore-in-fy19-replaces-air-india-bsnl-as-biggest-loss-making-psu/story/337470.html>(last visited on Dec. 2, 2019).

73 Department of Posts, 'Working Group Report: Twelfth Plan 2012-2017' 10, available at: http://planningcommission.nic.in/aboutus/committee/wrkgrp12/cit/wg_reppost.pdf(last visited on Dec. 2, 2019).

74 Revision Petition No. 2819/2018 (NCDRC).

in the recurring accounts were illegally withdrawn, in connivance with postal employees, on the basis of forged documents and later the accounts which they had opened in the postal office were also closed by the he postal employees and some postal agents On coming to know of the said acts on the part of the postal employees and postal agents, they lodged FIR with the concerned Police Station and also filed consumer complaints against the petitioners seeking payment of the amount which they had deposited with the said post office along with compensation before the district commission. The district commission directed the authority to refund the amount in their respective accounts with interest @9% per annum. Being aggrieved by the said order the petitioner approached the state commission by way of appeal. The said appeal having been dismissed the petitioners are before this commission by way of revision petition and application for the condonation of delay as the order of the state commission passed on september12, 2017 and the revision petition have been filed on October 5, 2018 *i.e.*, more than 1 year after the said order. The delay in filling the revision petition is that the petitioners sought legal opinion from the ACGSC Ahmedabad on October 11, 2017 whether to assail the impugned order/judgment or not thereafter on the directions of the Department of Posts, Ministry of Communication, the branch secretariat send the legal opinion to file a revision petition then the requisite documents were referred to the Directorate, INV for further necessary action on January19, 2018 to December 2, 2018 and was again reminded on March 28, 2018 over a period of timethe circle officer vide letter no. INV/Misc-Corr/2018 dated May 25, 2018 directed the Department of Posts, Ministry of Communication to file an appeal thereby challenging the said impugned order dated September 12, 2017and that the above said delay in filing revision petition occurred due to the administrative procedures and is neither intentional or deliberate.The National Commission on observing the purpose behind enactment of the Consumer Protection Act *i.e.*, to provide an expeditious remedy to the consumers who are aggrieved on account of any defect or deficiency in the goods purchased or services hired or availed by him as the case may be and to endeavour to decide a consumer complaint within a period of three month. The above application for the condonation of the delay betray total lack of coordination and gross negligence in pursuing the matter, which has resulted in delay of more than eight months in filing the revision petition. In fact, it has taken the petitioners almost one year to file these petitions after receiving the copy of the impugned order on October 9, 2017.The petitioner had also failed to five explanation as to how the hard-earned money which the complainants had deposited with the post office, came to be released. Therefore, the facts and circumstances of the matters also do not justify interference by this commission in exercise of its revisional jurisdiction at such a belated stage. Hence application for condonation of delay is dismissed. Consequently, the revision petition is dismissed as barred by limitation.

In *U. T. Chandigarh Administration v. Amarjeet Singh*,⁷⁵ The complainants had opened the opened recurring deposit accounts with Deesa Post Office at Deesa in District Banaskantha of Gujarat. They made deposits in the said accounts from time

75 Revision Petition No. 2819/2018 (NCDRC).

to time. Their grievance is that the money which they had deposited in the recurring accounts were illegally withdrawn, in connivance with postal employees, on the basis of forged documents and later the accounts which they had opened in the postal office were also closed by the postal employees and some postal agents. On coming to know of the said acts on the part of the postal employees and postal agents, they lodged FIR with the concerned Police Station and also filed consumer complaints against the petitioners seeking payment of the amount which they had deposited with the said post office along with compensation before the district commission. The district commission directed the authority to refund the amount in their respective accounts with interest @9% per annum. Being aggrieved by the said order the petitioner approached the state commission by way of appeal. The said appeal having been dismissed the petitioners are before this commission by way of revision petition and application for the condonation of delay as the order of the state commission passed on September 12, 2017 and the revision petition have been filed on October 5, 2018 *i.e.*, more than 1 year after the said order. The delay in filing the revision petition is that the petitioners sought legal opinion from the ACGSC Ahmedabad on 11.10.2017 whether to assail the impugned order/judgment or not thereafter on the directions of the Department of Posts, Ministry of Communication, the branch secretariat send the legal opinion to file a revision petition then the requisite documents were referred to the Directorate, INV for further necessary action on January 19, 2018 to December 2, 2018 and was again reminded on March 28, 2018 over a period of time the circle officer vide letter no. INV/Misc-Corr/2018 dated May 25, 2018 directed the Department of Posts, Ministry of Communication to file an appeal thereby challenging the said impugned order dated September 12, 2017 and the above said delay in filing revision petition occurred due to the administrative procedures and is neither intentional or deliberate. The National Commission on observing the purpose behind enactment of the Consumer Protection Act *i.e.*, to provide an expeditious remedy to the consumers who are aggrieved on account of any defect or deficiency in the goods purchased or services hired or availed by him as the case may be and to endeavour to decide a consumer complaint within a period of three month. The above application for the condonation of the delay betray total lack of coordination and gross negligence in pursuing the matter, which has resulted in delay of more than eight months in filing the revision petition. In fact, it has taken the petitioners almost one year to file these petitions after receiving the copy of the impugned order on October 9, 2017. The petitioner had also failed to give explanation as to how the hard earned money which the complainants had deposited with the post office, came to be released. Therefore, the facts and circumstances of the matters also do not justify interference by this commission in exercise of its revisional jurisdiction at such a belated stage. Hence application for condonation of delay is dismissed. Consequently the revision petition is dismissed as barred by limitation.

XIII CONCLUSION

The year 2018, the Supreme Court and National Commission have clarified many gray areas of the CPA, 1986. These clarifications will help the state commissions

and district *fora* in deciding the pending cases quickly and effectively. For more effective implementation of the CPA, 1986, there is a need for administrative control by National Commission on state commission and state commission control on district forum. Also, state government has to select of members of state commission and district forum on merits with good salary will strengthen redressal system. Next year once the Consumer Protection Bill, 2019, became an Act then Indian consumer will be better protection.