

## 9

**CONSUMER PROTECTION LAW***Ashok R. Patil*<sup>1</sup>**I INTRODUCTION**

THIS YEAR witnessed many landmark judgements by the Hon'ble Supreme Court, National Consumer Dispute Redressal Commission (hereinafter "NCDRC") as well as State Consumer Dispute Redressal Commission (hereinafter "SCDRC") on many aspects such as e-commerce, airlines, banking, insurance, real estate, education, and medical negligence, etc., which emphasised on protection of interests of consumers and the objective of the Consumer Protection Act, 2019 (hereinafter "CPA 2019"). However, with technological advancement of the society, artificial intelligence, and digital age there is a need to strengthen consumer protection in line with the present needs of the society. Consumers play an important role in today's time and therefore, several issues and challenges arise in the field of consumer laws. Also, the rights of consumers have evolved globally due to various forms of exploitation. India is also not behind and by the enactment of the CPA 2019, rules and regulations from time to time is evolving continuously to meet the present challenges. In this year survey, the important judgments relevant in various sectors have been analysed and how the Hon'ble Supreme Court and the NCDRC has taken note of unfair trade practices, medical negligence, deceptive practices, etc., is discussed.

**II. APPOINTMENT OF PRESIDENT/MEMBERS OF THE STATE AND DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSIONS**

In *Secretary, Ministry of Consumer Affairs v. Mahindra Bhaskar Limaye and Others*<sup>2</sup>, the Ministry of Consumer Affairs, Union of India and the State of Maharashtra have filed an appeal against the order of the Bombay High Court

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2 2023 SCC OnLine SC 23; 2024 (2) BomCR 568; 2023/BHC-NAG/15449-DB

which stuck down and declared Rule 3(2)(b)<sup>3</sup>, Rule 4(2)(c)<sup>4</sup> and Rule 6(9)<sup>5</sup> of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020<sup>6</sup> as arbitrary, unreasonable and violative of Article 14 of the Constitution of India.<sup>7</sup> In the case of *State of Uttar Pradesh v. All Uttar Pradesh Consumer Protection Bar Association*<sup>8</sup>, there were directions to frame rules with respect to the remuneration, appointments, service conditions, allowances, etc., of the President and Members of the State and District Commissions. Based on the previous judgments, where the Supreme Court declared article 14 to have include forum's power to adjudicate person's right in an impartial manner and independent manner, the High Court of Bombay held that there should be highest standards before the appointment of the President/Members in the State and District Commissions, and the above-mentioned rules under the CPA, 2019 gave powers to the selection committee in an arbitrary and unreasonable manner. The rules lacked transparency and involved political interference. The Consumer Dispute Redressal Commissions are empowered with the powers of the civil court and judicial functions as well as they are quasi-judicial bodies therefore, competency tests such as written examination and *viva voce* would be necessary. Hence, it was held in this case that Central and State Governments have to amend the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 and to provide that 10 years of experience is required to be eligible for the appointment of President/Members of the State and the District Commissions along with performance in the written test consisting of 200 marks in two papers each and was upheld by the Supreme Court of India.

- 3 A person shall not be qualified for appointment as a member of the State Commission unless he possesses a bachelor's degree from a recognised university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs....
- 4 A person shall not be qualified for appointment as a member of the District Commission unless he is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs....
- 5 The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.
- 6 The Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, terms of office, resignation, and removal of President and Members of State Commission and District Commission) Rules, 2020, Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) Notification dated July 15, 2020.
- 7 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- 8 (2017) 1 SCC 444; AIR 2016 SC 5368; (2017) 120 ALL LR 304.

In *Re: Inaction of The Governments In Appointing President And Members/ Staff of Districts And State Consumer Disputes Redressal Commission And Inadequate Infrastructure Across India v. Union Of India & Ors.*<sup>9</sup>, the Supreme Court directed the Centre and states to comply with the directions in *Secretary, Ministry of Consumer Affairs v. Mahindra Bhaskar Limaye and Others* within three months. The court also emphasised upon the mediation cells and appointment of mediators, and administrative infrastructure so as to facilitate the commissions in taking effective and speedy measures to dispose of the complaints.

### III POWERS /JURISDICTION OF NCDRC

**The CPA 2019 provides additional and alternative remedies to a complainant. If two remedies are available the complainant may choose any of the two available remedies.**

In *Adobe Marketing Private Limited through its Authorised Gopal Dass v. Haryana State Industrial and Infrastructure Development Corporation through its Managing Director*,<sup>10</sup> the complainant applied for an industrial plot from the opposite party for self-employment and livelihood. The complainant was allotted industrial plots, but later on, the function of development of industrial plots was handed over to the Haryana State Industrial and Infrastructure Development Corporation. The 70% of the total cost of the plots was deposited by the complainant to be Rs 1,73,65,500. However, there was no development, and the roads were also not developed. Therefore, the consumer filed a complaint to seek allotment of the alternative plots or refund of the amount paid to purchase the plots due to the failure of the opposite party. He sought a refund of the amount paid to the opposite party or for the alternative *i.e.*, allotment of different plots. But neither of the two happened, and hence, the complainant alleged deficiency in service<sup>11</sup> and unfair trade practice.<sup>12</sup> The opposite party raised questions on the pecuniary jurisdiction, and that the complainant was not a consumer under the CPA 2019 as the plots were required for commercial purpose. In *M Pyaridevi Chabiraj Steels Pvt. Ltd. v. National Insurance Company Ltd*<sup>13</sup> it was held that pecuniary jurisdiction is determined on the “value of goods and services paid as consideration and the not the value of the goods and services claimed.”<sup>14</sup> Hence the commission had jurisdiction to entertain the compliant. With respect to whether the complainant was a consumer or not the court took into considerations many previous judgments such as *Common Cause, A Registered Society v. Union of India*<sup>15</sup>, whereby the Supreme Court held that the CPA 2019 is for better protection

9 SLP(C) No. 019492 of 2021

10 III (2023) CPJ 467 (NC); 2023 SCC OnLine NCDRC 114;

11 Consumer Protection Act, 2019, Act No. 35 of 2019,s.2(11) (India).

12 Consumer Protection Act, 2019, Act No. 35 of 2019,s. 2(47) (India).

13 MANU/CF/0451/2020

14 *Supra*

15 (1999) 6 SCC 667; AIR 2018 SUPREME COURT 1665, 2018 (5) SCC 1, 2018

of the interests of consumers. In *Imperia Structures Ltd. v. Anil Patni*<sup>16</sup> it was held that the remedies “under the CPA 2019 are additional and over and above the remedies including those made available under any special statutes and availability of an alternative remedy is no bar to entertain the complaint under the CPA 2019.”<sup>17</sup> Also in the interesting cases of *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna*,<sup>18</sup> *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha*,<sup>19</sup> *National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy*,<sup>20</sup> clearly mentioned that under section 100 of the CPA 2019 which states “the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”<sup>21</sup> Thus, the ambit of the act is very wide and it is a social legislation to provide the protection of the interests of the consumers by promoting their welfare and at the same time to safeguard their interests. If two remedies are available for the same relief, then the party has a choice to avail and elect any of the two remedies available. The court applied the test of “whether the goods are purchased for resale or commercial purpose or whether the services availed are for commercial purpose.”<sup>22</sup> Hence, in this case it was established that the complainant was a consumer and if basic necessities were not provided such as roads, etc., the possession is only in paper and not physical. Hence, in this case the opposite party were directed to allot the alternative plots and the complainant was directed to pay the remaining balance.

**Nothing in the CPA 2019 prohibits the few complainants from joining together and filing joint complaints. The definition of complainant includes multiple consumers.**

In *Alpha G184 Owners Association v. Magnum International Trading Company Pvt. Ltd.*,<sup>23</sup> the appellant was an association registered under the Haryana Registration and Regulation of Societies Act, 2012<sup>24</sup> (hereinafter referred to as “the HRRS Act”). The respondent was a builder who did not construct and develop the flats within the agreed time. The appellants therefore approached the NCDRC to file a complaint on behalf of 54 allottees. A writ petition was filed by the respondent before the High Court of Delhi which was stayed and then they filed with the District Registrar of Companies who referred the matter to the Registrar who directed the appellant to amend its bylaws. The appellant then filed an appeal before the Registrar General but nothing transpired. Therefore, the complaint was taken by the NCDRC, and along with this an affidavit was also filed with respect to

16 (2020) 10 SCC 783; 2019 SCC OnLine 1910; AIR 2021 SC 70.

17 Consumer Protection Act, 2019 (Act No. 35 of 2019), s.100 (India).

18 (2021) 3 SCC 241; AIR 2021 SC 437.

19 (2004) 1 SCC 305; AIR 2004 SUPREME COURT 448; 2004 ALL. L. J. 172.

20 (2012) 2 SCC 506; AIR 2012 SUPREME COURT 1160; AIR SCW 1191.

21 Consumer Protection Act, 2019 (Act No. 35 of 2019), s.100(India).

22 *Laxmi Engineering Works v. PSG Industrial Institute* (1995) 3 SCC 583; 1995 AIR 1428; 1995 AIR SCW 2114.

23 2023 SCC OnLine SC 625.

24 Haryana Registration and Regulation of Societies Act, 2012 (Act No. 1 of 2012).

the pendency of the writ petition and stay application filed in the high court. Therefore, the issue was whether multiple complainants can seek relief under CPA, 2019. The CPA 2019 provides the manner in which a complaint can be filed and also who can be a complainant. Complainant means a consumer who buys goods and services for consideration.<sup>25</sup> The procedure for admission of the complaint is also discussed in CPA, 2019, and how the provisions of CPA, 2019 are in consonance with Order 1 Rule 8, Civil Procedure Code (CPC), 1908<sup>26</sup> is applicable. It means the CPA, 2019 nowhere prohibits a few consumers and not numerous consumers from having the same interest, and nothing prevents the few consumers from joining together and filing a joint complaint. When the expression “a consumer” is interpreted, the word “a” does not mean to exclude more than one person because if this was the intention of the legislature, then it would have been a disastrous situation while reading Section 2(5)(i) which states “in the case of death of a consumer, “his legal heir or legal representative” will be a complainant”.<sup>27</sup> In *Amrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd.*,<sup>28</sup> *Akshay Kumar v. Adani Brahma Synergy Pvt. Ltd. Through its Director*,<sup>29</sup> to determine the pecuniary jurisdiction of the consumer forum “the value of goods or services and compensation claimed taken into consideration.”<sup>30</sup> The CPA, 2019 provides a flexible procedure and if any technical approach is adopted then the very foundation of the CPA 2019 would be defeated and consumerism will not be encouraged in the country.

**The consumer commission takes into consideration the value of goods and services paid as consideration to determine the pecuniary jurisdiction and not the value of the goods or services purchased.**

In *Anita Sharma v. ICICI Lombard General Insurance Co. Ltd.*,<sup>31</sup> the complainant purchased a Life Insurance policy from the ICICI Lombard General Insurance Company Ltd. for a sum of Rs. 1,24,00,000, which covered critical illness, major surgical procedure, etc. When the policy was ongoing and valid, the husband of the complainant expired during the COVID-19 pandemic on April 25, 2021. However, the complainant's claim was repudiated on the ground of death caused by hypoxia and cardiac arrest and not critical illness. Hence, the complainant filed a consumer complaint and alleged deficiency of services. The issue was whether the State Commission wrongly dismissed the complaint on lack of pecuniary jurisdiction under section 47(1) (a) of CPA, 2019. The court considered previous judgments and how the pecuniary jurisdiction was determined and hence the

25 Consumer Protection Act, 2019 (Act No. 35 of 2019), s.2(5) (India).

26 The Code of Civil Procedure, 1908, Order 1 Rule 8 (Act No. 5 of 1908). This Rule pertains to representative suits, where one or more persons may sue or defend on behalf of all interested parties with the court's permission.

27 *Anil Kumar Virmani v. Brigade Enterprises Ltd.* 2021 SCC OnLine NCRDC 417

28 I (2017) CPJ 1; 2016 SCC OnLine NCDRC 70.

29 2023 SCC OnLine NCDRC 189.

30 Consumer Protection Act, 2019, Act No. 35 of 2019, s.47(1) (a) (India).

31 II (2023) CPJ 169 (NC).

Himachal Pradesh State Consumer Dispute Redressal Commission rightly held that it does not have jurisdiction. The amount of premium paid was Rs.2,45,569 and the consideration did not exceed Rs. 50,00,000. Hence, a revision petition was filed before the NCDRC which upheld the order of the State Consumer Dispute Redressal Commission and compensation was paid accordingly to the complainant.

**It is the duty of the Commissions to examine if the delay is reasonable and the special periods of limitation under the CPA 2019 for appeals and revisions has to be kept in mind. It is the duty of the court to examine if the mistake was bona fide or not.**

In *Feroz Abdurrahim Shaikh v. JMD VFM Cars India Pvt. Ltd.*<sup>32</sup> a delay of 646 days was there in filing the revision petition, and a condonation for the delay was sought. The opposite party was directed by the State Commission, Maharashtra, to take the delivery of the vehicle for repairs, which he kept for three months citing the non-availability of spare parts. The petitioner was again disappointed because of fraudulent repairs and was unable to drive on the road. There was also engine noise, gear noise and cabin noise which had become so severe that the petitioner left the said defective vehicle with the opposite party for repairs. However, in March 2020, the COVID-19 pandemic broke out, due to which the petitioner could not file the revision petition. The period of limitation for filing a revision petition under Consumer Protection (Consumer Commission Procedure) Regulations 2020, is 90 days from the date of receipt of the order. Also, the impugned order was passed on December 18, 2018 by the State Commission and the order was received by the petitioner on March 5, 2019. Thus, the limitation period lapsed on June 3, 2019. However, the revision petition was filed after a delay of 646 days. When sufficient cause is shown, there has to be an enquiry of condonation of delay. The basic test of examining the delay has to be properly examined, and whether the petitioner acted with reasonable diligence or not.

In the case of *Anshul Aggarwal v. New Okhla Industrial Development Authority*,<sup>33</sup> the Supreme Court observed that the court cannot forget the prescribed periods of limitation prescribed under the CPA 2019, and the object of expeditious adjudication will get defeated if the highly belated appeals and revision petitions are entertained. The petitioner must satisfy the court about sufficient cause for filing the revision petition after a stipulated time period. Sufficient cause means the party did not act negligently, did not remain inactive or did not act diligently.

**When an applicant has presented case beyond limitation in the court, it is necessary to explain “sufficient cause” that prohibited the applicant to approach the court.**

In *Director, BPS Medical College For Women v. Suresh Sharma*<sup>34</sup>, a revision petition was filed by the petitioner against the order of the State Commission

32 2023 SCC OnLine NCDRC 2030; Revision Petition No. 288 of 2021

33 (2011) 14 SCC 578; 2011 SCC OnLine SC 1059

34 2023 SCC OnLine NCDRC 1898;

Haryana, with a delay of 90 days. The petitioner alleged that the delay was non-intentional but due to various necessary approval of the authorities, administrative requirements, *etc.*, time was consumed. The petitioner had to prove “sufficient cause” which was explained in many cases by the Supreme Court time and again. In *Basawaraj v. Special Land Acquisition Officer*,<sup>35</sup> it was held that sufficient cause means when party does not act in a negligent manner or the cause for which the defendant could not be blamed for his absence. It depends on cases and each circumstance so that the court is enabled to exercise its discretion in a judicious manner. It is necessary to satisfy the court that a sufficient cause is prohibited to prosecute the case. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party’s own inaction, negligence or laches.<sup>36</sup>

#### IV MEDICAL SECTOR

**If the patient dies due to negligent operator who was not certified to treat with allopathic system then it is an unfair trade practice.**

In *Ahsamuddin v. Heera Lal*<sup>37</sup> the complainant’s wife Yashoda was ill and therefore was taken to Ahsamuddin at ZBM Hospital. The patient was treated by the doctor and gave her injections, *etc.*, The patient was discharged despite her ill health and was referred to another doctor. The patient’s health deteriorated further and when she was taken in emergency to other hospital she was declared dead. The opposite party was an “A” class registered practitioner in indigenous system of medicine and was not expert in allopathic systems. The patient’s husband therefore, filed a case before the district forum and the issue was whether the doctor had the right to treat patient by allopathic systems and whether it amounted to unfair trade practice. It was held that “A” class registered practitioner of indigenous system of medicine has a right to give expert evidence but has not been given the right to treat patient with allopathic systems. Hence, the District Commission directed the opposite party to pay Rs. 4 lakhs with interest @ 9% p.a. to the complainant for unfair trade practices. An appeal was filed by the opposite party in the State Commission which confirmed the order of the District Commission. A revision petition was filed against this order in the NCDRC which also upheld the decision of the State Commission and dismissed the revision petition.

**If fundamental amenities are not provided by the hospital knowingly then it is an unfair trade practice.**

In *Thirthankar Superspeciality Hospital v. Manzoor Hussain Nadeem*,<sup>38</sup> the patient’s only one kidney was functioning since her birth but was leading a

35 (2013) 14 SCC 81; AIR 2014 SUPREME COURT 746, 2013 (14) SCC 81, 2013 AIR SCW 6510.

36 *Ibid.*

37 2023 SCC OnLine NCDRC 472.

38 2023 SCC OnLine NCDRC 1223.



normal life. However, she suffered from a fever and was treated for the same by S.M. Agarwal at Akola. Various tests were advised to the patient, such as sonography and after considering the report, Agarwal advised the patient to consult another Mulawkar at Aloka. The doctor diagnosed the patient and opined that the right side of the kidney was affected due to a problem in the urinary bladder, and medicines were prescribed for the same. The patient was also hospitalised for two days. However, after a few days, when there was no relief to the patient, the doctor suggested some pathological tests and a minor operation on the right side of the kidney due to the more serum creatinine than the normal limit. The patient was informed that the surgery was risk-free and without any danger to the life of the patient to which they agreed and admitted. The operation was successful and was kept under observation. However, the patient died, and the complainant alleged that there was a lack of professionalism and negligence in performing professional duties post-operation as there was a lack of ICU amenities, *etc.*, which amounts to a deficiency in service. A complaint was filed for medical negligence in discharging the professional duties before the State Commission which directed the opposite parties were directed to pay jointly and severally compensation with interest to the complainant. An appeal was filed in the NCDRC which affirmed the order of the State Commission on account of medical negligence.

**To bring a successful claim against medical professionals, the 4 D's i.e., duty, deviation, direct proximate cause and damages must be proved.**

In *Mohit Jain v. Max Super Specialty Hospital*,<sup>39</sup> the complainant consulted Doctor Sanjeev Kumar at Max Super Speciality Hospital, Delhi, due to fever, fatigue, blood spots, vomits, *etc.*, and was prescribed a few tests for investigation, which diagnosed Viral Hemorrhagic Fever (VHF) and the doctor advised hospitalisation of the patient in an emergency. He was also diagnosed with hemolytic anaemia, and there was an immediate transfer of the patient to the Hematology Department. However, he was kept in the medicine department. The patient also needed a Gastroenterologist, but no steps were taken. The complainant further alleged many other deficiencies such as improper tests, lack of proper visits by the doctors, *etc.* The complainant alleged deficiency of services and medical negligence by the doctors and hospital and filed a consumer complaint in the NCDRC and sought compensation of Rs. 20,33,44,867/-. The opposite party denied medical negligence but on careful examination and expert evidence, it was evident that there was omission, injury and loss suffered by the patient. The various judgments from the Supreme Court such as *Jacob Mathews*<sup>40</sup>, *Malay Kumar Ganguly*,<sup>41</sup> *etc.*, were discussed as to what is medical negligence. For medical negligence 4 D's i.e., Duty. Derliction/deviation, Direct cause and Damages should exist. However, it was held that out of '4 Ds' the complainant only proved duty of hospital and

39 II (2023) CPJ 521 (NC)

40 (2005) 6 SCC 1

41 (2009) 7 SCC 130



medical professionals but could not prove other D's such as breach of duty of care, and damages, etc.

#### V INSURANCE SECTOR

**An insurance policy indemnify risk of loss/damages and it does not generate profit as it is a contract to indemnify loss.**

In *National Insurance Co. Ltd. v. Harsolia Motors*<sup>42</sup> Harsolia Motors took a fire insurance policy from the National Insurance Co. Ltd. to cover his office, and other premises. During the Godhra riots premises got damaged, and hence, Harsolia Motors instituted a complaint for damage caused due to the Godhra incident and indemnification of the insured sum under the policy of insurance. The SCDRC held Harsolia Motors not a consumer under section 2(1)(d) of the CPA 1986. It was a business for earning profits under the commercial purpose. The matter was brought before the NCDRC to determine whether the insurance policies taken by commercial units would be services for commercial purposes and therefore do not fall within the CPA 1986.

The NCDRC observed that “for commercial purpose” means goods purchased or services hired to generate profits is the main aim of commercial purpose but if not intended to generate profit, then it would not be a commercial purpose. It also observed that if an insurance policy is taken by a person to cover risks, it is only for the purpose of indemnification and not to generate profits from the same. Hence, the complainant was held to be a consumer under CPA, 1986. The NCDRC also took note of *Laxmi Engineering Works v. P.S.G. Industrial Institute*<sup>43</sup> and held commercial purpose is determined on the basis and circumstances of each case and circumstances. The NCDRC held that insurance policy is to cover risks and indemnification of actual loss but not for generating profits. This order of NCDRC was challenged by way of special leave in the Hon'ble Supreme Court. The various definitions under the CPA 2019 such as “consumer”, “person”, “services”, etc., were examined by the court. The Court observed that in various cases such as *Paramount Digital Colour Lab v. AGFA India Private Limited*,<sup>44</sup> etc., a person is a consumer or not varies from facts and circumstances of each case. The Court further observed that a contract of insurance is a contract of indemnity of the defined loss.

The main basis of determination in this case was whether the insurance service means the profit-generating activity and whether the dominant purpose for the insurance was to generate profits. In this case, the Court held that there was no direct nexus with the commercial activity, and the claim of insurance because insurance claim only indemnify the loss which was suffered. The respondent was held to be a consumer under the CPA 1986 and the National Insurance Company was directed to pay Rs. 9,57,903 with interest @ 9 % p.a.

42 (2023) 3 S.C.R. 448

43 (1995) 3 SCC

44 (2018) 14 SCC 81; 2015 SCC OnLine NCDRC 975

## VIBANKING SECTOR

**A master-servant relationship/ employer-employee relationship and not provided 'service' as per the CPA 1986.**

In *ICICI Bank Ltd. v. Digamber Vaman Gurjar*,<sup>45</sup> the complainant was an employee of Sangli Bank Limited and retired in 2017. The bank in 2007 merged with ICICI Bank. The complainant failed to exercise pension options under the Pension Regulations of 1995. The complainant had also resigned from Sangli Bank and accepted provident fund dues. The complainant alleged the non-establishment of the pension fund under the regulations, which was objected to by the ICICI Bank because the complainant did not exercise his option of pension fund. The complainant filed compliant in the District Commission for lack of jurisdiction which was decided in favour of the complainant. The main contention was whether the complainant was a consumer in the present case and whether there was jurisdiction in the District Commission. The Opposite party filed a writ petition before the High Court of Bombay which directed the District Commission to conduct an inquiry on the jurisdiction of the forum. Hence, a revision petition was filed before the State Commission which directed the matter to the District Commission. The opposite party was aggrieved by the said orders and hence filed a revision petition on the ground of jurisdiction and the alleged conduct was not deficiency in services under the CPA 1986.

The commission took into consideration difference between a “contract of service” and a “contract for service.”<sup>46</sup> A contract for service means services based on professional skills and discretion, whereas a contract of service means the employer-employee relationship with instructions and directions. The contract of services is excluded from the definition of CPA.

The definition is divided into the main part, the inclusionary part, and the exclusionary part. The contract of service is excluded from the expression service.<sup>47</sup> In this case, the complainant employee was not making any payment of any expenses/ contribution towards the administration of the pension fund, and therefore, there was no question of services being provided by the employer does not rise. In this case, it was held there was a master-servant relationship/ employer-employee relationship and not provided 'service' as per the CPA 1986. The complainant was not a consumer in this case.

**The consumer commissions have jurisdiction to take care of matters involving deficiency of services and not the criminal aspects of any transaction. Summary trial does not mean justice cannot be done to the consumer.**

In *Parveen Kumar Jain v. HDFC Bank Ltd.*,<sup>48</sup> the complainant had an HDFC credit card, which was used on 30-03-2014 for various transactions of Rs. 24,000

45 2023 SCC OnLine NCRDC 1318; REVISION PETITION NO. 28 OF 2020.

46 *General Assurance Society Ltd. v. Chandumull Jain* (1966) 3 SCR 500.

47 *Indian Medical Association v. V.P. Shantha* 1996 AIR 550, 1995 SCC (6) 651, AIR 1996 SUPREME COURT 550.

48 2023 SCC OnLine NCDRC 2003.

by someone. The complainant got a confirmation call from the HDFC bank team, which he answered in negative. Thereafter the complainant contacted the customer care of the bank to know the status of his transactions. The complainant received calls from the opposite party requesting to file a dispute form and a police complaint. The complainant completed all the required formalities by the bank, including the progressive dispute form, but the transaction was not reversed. Hence, the complainant filed a case before the District Commission and alleged fraud transaction, deficiency of services, *etc.* The main contention is that this case was not a fraud/criminal trial, which is the prerogative of the criminal courts, but rather a deficiency of services and unfair trade practices by the bank, and hence, a consumer under the CPA 2019. However, the complaint was dismissed by the District Commission on the ground that fraud was alleged and therefore, it needs proper investigation and not summary proceedings. The State Commission discussed the case of *Bright Transport Cp. v. Sangli Sahakari Bank Ltd.*<sup>49</sup> which held that “complicated questions of law cannot be decided in a summary proceedings under the CPA 1986.” The State Commission confirmed the order of the District Commission. Therefore, a revision petition was filed by the complainant against the order of the State Commission in the NCDRC. The NCDRC observed that the procedure under CPA 2019 is simple, inexpensive and a speedy remedy is provided to the consumers in a summary trial, which does not mean justice cannot be provided when questions of facts are to be decided which was upheld in *J.J. Merchant v. Shrinath Chaturvedi*.<sup>50</sup> Hence, in this case, the NCDRC held the bank liable for deficiency of services and a reverse of transactions of Rs. 24,000 along with interest @7 % p.a. to the complainant along with compensation for mental agony, *etc.*, suffered.

#### VII AIRLINES

##### **Negligence of the Airline such as loss of baggage, is deficiency of service.**

In *Gaganjeet Bhullar v. Emirates Airlines, Delhi and NCR*,<sup>51</sup> the complainant was a professional golf player. He represented India in various world level championships and had won various medals. He was a winner of the Anjum Award in 2013 and a silver medal in Asian Games 2006. He was a famous player and also did many contracts with famous companies such as Titleist and Footjoy. It was mandatory for him to wear and use the apparel and equipment of companies with which he had contracted else, he would be penalised. He was also a frequent traveller of Emirates Airlines for 4-5 years. However, during recent travels, his baggage was lost due to negligence on the part of the airlines. On 17-02-2014, the complainant flew from Johannesburg to Mumbai *via* Dubai by Emirates Airlines and was promised that his baggage would arrive by the next flight. He waited for many hours but did not receive his luggage and hence missed his cut on the next day as he did not have the necessary equipments such as golf shoes, golf caps,

49 II (2012) CPJ 151 (NC).

50 (2002) 6SC 635.

51 IV (2023) CPJ 544 (NC).

golf wear, golf balls, etc. He also missed the opportunity to win a prize worth Rs. 1.5 crores, next practice in Casablanca, which caused a loss to his game and confidence. The complainant flew again from Delhi to Casablanca by Emirates Airlines in business class, but his golf kit was delivered to him the next day. The baggage carried his clothes to be worn as per the contract, golf balls, T-shirts, shoes, etc., which were lost again, leading to mental agony, anxiety, and monetary losses. A breach of agreement was committed by the complainant with companies Titleist and Fotjoy. Due to all these incidents, he could not focus on tournaments. He filed a complaint against the airlines for the losses suffered by him and the deficiency of services by Emirates Airlines. The opposite party filed the written statements and denied the allegations of the complainant and stated that one bag was delivered to the complainant. No proof of any supporting document against him by the companies for violating the agreement was produced by the complainant. Hence, the NCDRC, in an appeal, partly allowed the complainant to submit proof of the value of the lost baggage and to receive a payment within the limit of SDRs 1000 with interest @ 9 % per annum.

In the case of *Air India Ltd. v. Tushar Kothari*,<sup>52</sup> a revision petition in the National Commission was filed by Air India Airlines. The complainant and his family members booked Air India tickets to travel from Nagpur to Goa. They had 16 luggage bags with them, and after reaching the destination, only 15 bags were received by the complainant. One bag was misplaced, for which a complaint was lodged at the airport. The complainant was assured that his bag would be recovered after proper investigation. The missing bag could not be recovered, and therefore, compensation of Rs. 3,600 was offered at the rate of Rs. 450 per kg as per Carriage Rule 1972. However, the complainant filed a complaint in the District Commission alleged deficiency of services by the airlines and sought compensation of Rs. 2,03,785/- along with other expenses. The District Commission allowed the complaint for deficiency of services and directed the airlines to pay compensation of Rs. 2,03,785/- towards costs of articles and compensation of Rs. 1,00,000 and cost of litigation Rs. 10,000. The Airlines appealed before the State Commission that they had complied with the provisions of the Carriage by Air Act, 1972<sup>53</sup>. After taking into consideration material on record, the State Commission confirmed the order of the District Commission. Thus, compensation was offered to the tune of Rs. 3,600, which was given on a lawful basis. be set aside except on the ground of illegality, material irregularity or jurisdictional error.

#### VIII REAL ESTATE

##### **Pendency of insolvency proceedings and moratorium does not bar rights of a consumer.**

In *Neena Aneja v. Jai Prakash Associates Ltd.* <sup>54</sup>, the complainant entered into a contract with the opposite party for housing construction “Krescent Homes

52 II (2023) CPJ 154 (NC); 2023 SCC OnLine NCDRC 37.

53 It lays down standards with respect to airport operators, airline operators.

54 III (2023) CPJ 361 (NC); AIR 2021 SUPREME COURT 1441, AIRONLINE 2021 SC 143.

at Japypree Greens, Noida,” for a total consideration of Rs. 56,45,580 and also paid an advance of Rs. 3,50,000. The builders had promised the delivery of the flat within 42 months. However, the possession was not handed over to the complainant. Also, insolvency proceedings were also initiated against Japypree Infratech Limited (JIL) under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC). The NCLT, Allahabad invited claims from the creditors and the complainant was one of them. The opposite party raised various objections as to the lack of pecuniary jurisdiction, non-joinder of parties, etc., and averred force majeure events in the completion of the housing project. The NCDRC held that complainants cannot wait for unreasonable period of time due to pendency of insolvency proceedings and they have a right to retract from the agreement and seek relief. Moratorium proceedings against Japypree Infratech Limited is not a bar to prohibit rights of a complainant. The reliance was placed on *Kolkata*

*West International City Pvt. Ltd. v. Devasis Rudra*<sup>55</sup> and *Pioneer Urban Land & Infra Ltd. v. Govindham Raghavan*<sup>56</sup> and directed the opposite party to refund to the complainants consideration amount along with interest @9% p.a.

In *Bankey Bihari Social Welfare Society v. Delhi Development Authority*<sup>57</sup> a consumer complaint was filed by Bankey Bihari Social Welfare Society, under section 21 and 22 of the CPA 2019 to seek compensation because there was a delay in the possession of the plot. Also, a refund was sought which was charged by the Delhi Development Authority (DDA). The DDA filed an application to dismiss the complaint because the plot was for commercial purposes. The issue in this case was whether there was a commercial activity to generate profits. The complainant was a trust who was engaged in providing education and medical facilities and hence, the plots were not purchased for commercial purposes and allowed the consumer complaint as well as refund of Rs. 34,58,000/- along with the interest @12 % p.a.

**Home buyer cannot be made to wait for possession for an unlimited period.**

In *Gaurav Gupta v. Raheja Developers Ltd*<sup>58</sup> the complainant booked an apartment in Raheja Revanta project on 15.11.2011 by paying booking amount of Rs. 1036910/-. On 21.04.2012, the opposite party allotted apartment No. IF 32-03, Independent Floors, Raheja Ravanta, Sector-78, Gurgaon-122001 measuring approximately 1960.84 sq. ft. super area on 2<sup>nd</sup> floor and a court/terrace area of 225.61 sq. ft. Relying on the assurances of the opposite party, the complainant further paid an amount of Rs. 6 lakhs on April 30, 2012. Thereafter, agreement to sell was executed between the parties on July 27, 2012. On the basis of the agreement, the complainant paid about 95% of the sale consideration till November, 2016. The complainant paid total amount of Rs. 90 lakhs to the developers by May, 2015.

55 II (2019) CPJ 29 (SC); (2020) 18 SCC 613.

56 II (2019) CPJ 34 (SC); AIR 2019 SUPREME COURT 1779, 2019 (5) SCC 725, AIRONLINE 2019 SC 153.

57 II (2023) CPJ 427 (NC).

58 2023 SCC OnLine NCDRC 1813.

Thereafter, the complainant applied for house loan with HDFC Bank Ltd. and a tripartite agreement was signed and executed on May, 2015 between the parties. As per ledger account of the opposite party, the complainant paid a sum of Rs. 10499349/- to the opposite party. The apartment was to be given within a fixed period of 36 months from the date of booking. The opposite party failed to hand over possession of the apartment within the stipulated period. The complainant has paid Rs. 26,39,789/- as interest to the HDFC Bank and thereafter is not in a position to pay EMI to the bank. Therefore, the complainant has written letter dated May 24, 2018 seeking cancellation of allotment and refund of the amount deposited, which they failed to do. The complainant sent legal notice dated July 28, 2018 seeking refund of the amount but in vein. The complainant alleged deficiency in service on the part of the opposite party and filed the complaint on September 24, 2018.

The NCDRC observed possession was to be handed over within 36 months with a grace period. Hence, the complainant was allotted apartment No. IF 32-03, Independent Floors, Raheja Ravanta, Sector-78, Gurgaon-122001. The apartment buyer agreement was executed in May, 2015. The opposite party was liable to handover the possession by November, 2018, which it failed to do. When the complainant requested for cancellation and refund of his amount, the opposite party also failed to refund the amount. The opposite party has taken plea of force majeure, which is not liable to be accepted. If the opposite party was not proceeding with the construction, there was no justification for realising the payment. Therefore, the opposite party was instructed to refund the entire amount paid by the complainants along with the interest.

In *Nikhil Kumar Garg v. Castle Vista Pvt. Ltd.*,<sup>59</sup> the complainant had booked an apartment in a project being developed by the Opposite Parties namely “Serenity” situated at Kanakpura Main Road, Bangalore. After the agreement was executed by giving booking amount, the opposite party executed a construction agreement and promised to deliver the possession of the apartment by the end of 2015. However, the possession was not delivered on time. The complainant had taken a bank loan, and a tripartite agreement between the complainant, the opposite party and the bank was executed in 2013. The complainant alleged diversion of funds from him and other buyers in other projects of the opposite party and hence deficiency of services in not providing the apartment on time and diversion of funds. The opposite party alleged lack of jurisdiction, suppression of material facts, etc. However, after various evidences, the National Commission opined that the complainant Nikhil Kumar Garg was a ‘Consumer’ and there was a deficiency of services by the opposite party hence they were directed to refund the amount to the complainant along with the interest @ 9 % p.a.

59 2023 SCC OnLine NCDRC 572.

## IX E-COMMERCE

**The CCPA can exercise suo moto powers to protect the interest of the consumers.**

In *Cloudtail India Private Limited v. Central Consumer Protection Authority*,<sup>60</sup> Cloudtail India Private Limited (the appellant) was doing e-commerce on [www.amazon.in](http://www.amazon.in)<sup>61</sup> in India. The Cloudtail India listed “Amazon Basics Stainless Steel Pressure Cooker”, on this website for sale in India. These pressure cookers had a European Standard Mark. The Ministry of Commerce and Industry, Government of India had issued Domestic Pressure Cooker (Quality Control) Order, 2020,<sup>62</sup> and according to this order it was mandatory for the pressure cookers to confirm with the Standard Mark from Bureau of Indian Standards. Hence, the Central Consumer Protection Authority, held in its order that if any pressure cooker is offered for sale in domestic market it should confirm with Indian Standard Mark. The Cloudtail’s pressure cooker did not confirm Indian Standard IS 2347 :2017 and hence were liable under CPA 2019 for selling defective goods in the market. The Central Consumer Protection Authority (hereinafter referred “CCPA”) issued a show cause and on hearing directed Cloudtail to recall pressure cookers sold on Amazon. An appeal was filed from the order of the CCPA wherein, the importance of BIS standards was highlighted and held it is dangerous and against public interest if the safety standards are not followed. Therefore, they were directed to recall 1033 pressure cookers and refund price to the consumers. A penalty of Rs. 1,00,000/-, was also imposed upon it for selling the pressure cooker, in contravention of the Quality Control Order, 2020<sup>63</sup>. The NCDRC confirmed the order of the CCPA was within the jurisdiction and power to take suo moto actions.

## X MISLEADING ADVERTISEMENTS

In *Tandon v. Bhatia Global Hospital & Endosurgery Institute & Ors.*<sup>64</sup> a couple approached Bhatia Global Hospital and Endosurgery Institute (hereinafter referred as “Institute”), New Delhi, for Intra-Cytoplasmic Sperm injection (ICSI)<sup>65</sup> and the doctor assured them about the treatment and its success. The couple was admitted to the hospital, and accordingly, the procedure for embryo transfer was completed. She gave birth to twins in 2009. However, the blood group of one of the

60 IV (2023) CPJ 361 (NC).

61 Amazon is one of the largest operating e-commerce platforms in India.

62 This order directed that the goods shall confirm to the Indian standard and shall bear the Indian Standard Mark.

63 Ministry of Commerce and Industry, Government of India, in exercise of its power under Sec. 17 read with Sec. 25, of Bureau of Indian Standards Act, 2016, issued Domestic Pressure Cooker (Quality Control) Order, 2020, (for short the Order) vide Notification dtd. 21/1/2020, published in the Gazette of India on 21/1/2020, making it mandatory for domestic pressure cooker to conform to the corresponding Indian Standard and bear Standard Mark under a licence from Bureau of Indian Standards, as per Scheme-I of Schedule-II of Bureau of Indian Standard (Conformity Assessment) Regulation, 2018, w.e.f. 1/8/2020.

64 III (2023) CPJ 391 (NC).

65 ICSI is a treatment of infertility, it creates an embryo and a kind of in vitro fertilization (IVF).



twins did not match with the parents blood group. After DNA profiling it was revealed that the father was not the biological father of the twins. Hence, the complainant filed a complaint at the consumer forum for negligence and deficiency of services as well as misleading advertisements. Based on evidence on record and supportive documents, it was held that the opposite parties were negligent and carried misleading advertisements to deceive infertile couples. To fix the amount of compensation the various judgments were that mentioned the quantum of compensation were observed. It was held that the opposite party was engaged in misleading advertisements to allure the infertile couples and hence adopted unethical practices.

#### XI AGRICULTURE

**There should be a balance between procedural adherence and the principles of substantial justice especially in cases of consumer disputes.**

In *Sahkari Sangh Ltd. v. Durga Agro Seed Farm*,<sup>66</sup> the complainant, a cooperative society, was licensed by the State Government to supply seeds and distribute them to the farmers, and the opposite party was a firm engaged in the supply of seeds. The complainant placed an order for the supply of 300 quintal seeds of wheat and paid Rs. 3,43,500, which was acknowledged by the opposite party. However, the opposite party failed to supply the seeds due to which the complainant suffered a loss. The complaint was filed by the complainant in the District Forum, Unnao, for deficiency of services. The District Forum proceeded ex parte and ruled in favour of the complainant, but that was appealed by the opposite party in the State Commission, and they claimed the receiving of Rs. 3,43,500 for the supply of 300 quintals of wheat seeds but could not fulfil the order due to their health issues. The State Commission ruled that the complainant does not fall under the term “consumer” and the complaint was outside the jurisdiction of the consumer forum. Against this order, a revision petition was filed in the NCDRC by the complainant that the appeal by the opposite party was filed after a delay of 423 days and the State Commission ignored it in concluding that the distribution of seeds was for commercial activity. The National Commission observed failure to supply the seeds was a deficiency of services on behalf of the service provider/supplier and held that justice would be served to the opposite party and refunded the amount to the complainant.

#### XII ELECTRICITY

In *M/s Gagan Gasto Care v. Punjab State Power Corporation Ltd. & Anr.*<sup>67</sup>, the complainant got a temporary electricity connection from the opposite party/respondents for the construction of a hospital building to earn a livelihood by self-employment. However, the connection was disconnected after some time, and the complainant applied for a regular connection of 125 KW, which was installed with a meter outside the building. When the inspection was done by the opposite

<sup>66</sup> III (2023) CPJ 93 (NC).

<sup>67</sup> IV (2023) CPJ 408 (NC).

party, they concluded that the sanctioned load and the consumption were not equal and hence removed the meter for testing. It was revealed that the meter was running slow by 90.44 %, and an amount of Rs.5,12,896 was to be recovered. Hence, a complaint was filed before the District Commission, which was decided in favour of Gagan. Hence, the opposite party went in appeal before the State Commission, which was in their favour. Therefore, a revision petition was filed by the complainant on various grounds such as non-intimation of testing of the meter in the ME lab, usage of electricity connection for livelihood and not commercial purposes, tampering with the seal of the meter, testing of the meter with HT Testing scan was not done, State Commission failed to exercise jurisdiction so vested, etc. The National Commission, after observing all the relevant records, was of the same view as the District Commission that the opposite party was responsible for the defective and slowing down of the meter.

### XIII AUTOMOBILE

In *Mahindra and Mahindra Ltd v. Prakash Singh*,<sup>68</sup> the complainant purchased a Mahindra XUV 500 vehicle from an authorised dealer. The vehicle was repaired many times, which amounted to a manufacturing defect in the vehicle, due to which a complaint was filed in the district forum, which allowed either a replacement or a refund of the entire consideration and compensation with interest @9 %. A complaint was filed in the District Commission which directed the opposite party to either replace the vehicle or refund the entire consideration amount of Rs. 12,90,697/- with interest @ 9 % and compensation. An appeal was filed by Mahindra in the State Commissions, which set aside the district forum order and directed that the defects can be rectified, defective parts can be replaced with new parts, certification by 2 engineers of Mahindra and Mahindra, etc. An inspection of the vehicle was conducted by the engineers who submitted their report including replacement and alignments, etc. The complainant filed a second complaint again after eight months on the same grounds of defects in the vehicle, which directed the opposite party to overhaul the entire suspension system at their own cost. This order was challenged in the revision petition in the State Forum but was dismissed. When the matter was brought before the NCDRC, reliance was placed on previous decisions of the Supreme Court and the NCDRC. The NCDRC held that continuous repair of vehicles and their parts is unusual despite repairs and replacements. The CPA, 1986 also provided for “procedure on the admission of complaint” and a sample of the goods to the appropriate laboratory and section 14 of the 1986 Act provided a consumer forum with the power to award compensation or damages. Hence, the NCDRC partly allowed the revision petition and testing of the suspension of the vehicle at the cost of the petitioner, and if the manufacturing defect was established by the expert’s opinion, then the expenses were to be remitted to the respondent.

68 III (2023) CPJ 376 (NC).

## XIV SERVICE SECTOR

**Compensation was awarded for the medical negligence by services provided by the hotel staff.**

In *ITC Ltd. v. Ashna Roy*,<sup>69</sup> the complainant filed a consumer complaint against ITC Limited and its Chairman, alleging a deficiency in services in cutting hair against the instructions of the complainant. The complainant visited the saloon of the ITC Maurya Hotel to get her hair styled for an interview. She gave specific instructions to the hairdresser, such as long flicks/layers covering her face and back, etc. However, she could not see the mirror as she did not wear her spectacles at the time of the cut. However, she was in a great shock to see her hair completely chopped off and against the instructions given by her. When she complained the salon offered her free hair extension service which she accepted. Also, excess ammonia was used in the hair treatment, which damaged her scalp and hair and caused irritation, burning, etc. She faced humiliation and embarrassment due to short hair, mental breakdown and trauma, lost her job, etc. The issue was whether the complainant was a consumer under section 2(1)(d) of the CPA 2019. The NCDRC relied upon the judgment of *Charan Singh v. Healing Touch Hospital*<sup>70</sup> and the emotions and attachment of hair in women life. The Commission also took note of the fact that she was a model for VLCC and Pantene and hence, lost expected assignments. It was also found that the complainant was not a consumer under the CPA 2019, but the opposite party was guilty of medical negligence in hair treatment. The evidence received and the material provided, the NCDRC allowed the complaint and directed the opposite party to pay a compensation of Rs. 2,00,00,000 (Rupees Two Crores only). However, the opposite party went in appeal before the Hon'ble Supreme Court. The Supreme Court affirmed the findings of the NCDRC but set aside the order of compensation of Rs. two crores and remitted the matter to the NCDRC to give the complainant an opportunity to give evidence to claim of Rs. three crores.

## XV CONCLUSION

The year 2023, has clarified many grey areas of the CPA 2019 and witnessed many changes on important facets of consumer protection which makes the consumers feel protected against unfair trade practices, misleading advertisements, etc., but also the state commissions and district commissions to adjudicate the matters in a quick and speedy manner. The CPA 2019 is a consumer oriented legislation which has from time to time taken care of consumer rights through its three-tiered system as well as the CCPA which has suo moto powers to issue safety notices, recall dangerous goods, etc. The Supreme Court went a step ahead in matters of appointment of Presidents/members in the Consumer commissions so that disputes are redressed in an effective manner. Mediation has also been the focus of the commissions lately so as to dispose of the matters in an easy and cost effective manner, which aligns with the legislative intent and objectives of the CPA 2019.

69 2023 SCC OnLine SC 108; AIR 2023 SC 827.

70 (2000) 7 SCC 668; AIR 2000 SUPREME COURT 3138, 2000 AIR SCW 3409.