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CONSUMER PROTECTION LAW

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I INTRODUCTION

THE CONSUMER Protection Act, 1986 (hereinafter CPA) has completed 30 years. The CPA was amended three times in the year 1991, 1993, and 2002. Presently Consumer Protection Amendment Bill, 2014 is pending before the Parliament. The bill proposes certain important amendments which includes the establishment of the Central Consumer Protection Authority. The objective of the authority will be to prevent the exploitation of consumers and violation of their rights and also to promote, protect and enforce the rights of consumers. The cases can be resolved through mediation and negotiation. Besides, the authority can conduct investigations, either *suo motu* or on a complaint, into violations of consumer rights. They can conduct search and seizure of documents/records/articles and other forms of evidence and summon delinquent manufacturers, advertisers and service providers for direct production of documents and records, to record oral evidences. This apart, the authority can also order recall of goods or withdrawal of services found to be unsafe or hazardous and order reimbursement of the price of the goods (or services) so recalled. It further permits online filing of complaints and provides that the orders of the district forum, state commission or National Commission shall be enforceable as a court decree. It levies a penalty if the orders are not complied with. The state government in consultation with the state commission is empowered to notify places for the performance of its functions other than the district headquarters (i.e. *taluka* places).

The Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Government of India (DCA) has done lots of work for the protection the consumers. Some of the examples where the court has upheld the interest of the consumers are discussed.

As per the directions of the High Court of Madhya Pradesh in *Awdhesh Singh Bhadoria* v. *Union of India*,[1] an inter-ministerial committee was constituted

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1 2013(2) JLJ 199; 2013(2) MPHT 70; 2013(1) MPLJ 561.

with certain objectives to monitor misleading advertisement and unfair trade practices arising thereto and suggest steps accordingly. Accordingly it constituted inter-ministerial committee to Monitor Misleading Advertisement and Unfair Trade Practices. The committee has met three times at New Delhi but is yet to take strong actions against wrongdoers. In the above case, public interest litigation was field on many misleading advertisements which were published by the companies in the newspapers. The advertisement claimed that their products provided best treatment for particular ailment without any proof of research or clinical studies. The high court observed that according to the norms clause (xiii) of the norm no. 36 of the Journalist Conduct 2010 [2] specifically provides that tele-friendship advertisements carried by newspapers tend to pollute adolescent minds and promote immoral cultural ethos. The press should refuse to accept such advertisements. It has further been mentioned that the advertisement of contraceptive and supply of brand item attaching to the advertisement is not very ethical. In this regard the Secretary, Press Council of India has submitted certain recommendations to the ministry. It included common guidelines to be drawn for monitoring advertisements in electronic media and to set up a committee to monitor the advertisement on regular basis, with certain objectives to, monitor misleading advertisement and unfair trade practices arising thereto and suggest steps accordingly.

Later, the DCA had constituted a committee known as 'Committee to Review the Recommendations in 26th Report of the Standing Committee'. The committee met and gave suggestion for the better and effective amendment to CPA. They also through a Gazette notification on 31st December 2014[3] had constituted the 'Central Consumer Protection Council' to promote and protect the rights of the consumers in India. The committee meets minimum once in a year under the chairmanship of Minister of Consumer Affairs, Government of India. The last meeting concluded with very fruitful discussions and suggestions on the consumer protection issues to the government.

In the year 2014, the cases that came up before the Supreme Court and National Consumer Dispute Redressal Commission (NCDCR) centered around the procedural issues pertaining to appointment of members, powers of consumer forum, limitation, jurisdiction, review power of state commission and district forum, to implead at appeal stage, execution, representation of agents/non-advocates, deficiency in service in banking sector, medical profession, educational institution, insurance, airlines; unfair trade practice, *etc.*

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2 The Press Council of India has framed Norms of Journalist Conduct-Edition 2010, in order to build-up code of conduct for newspapers, news agencies and Journalists in accordance with high professional standards, *available at* : http://www.caluniv.ac.in/global-mdia-journal/DOC-GMJ-DEC-2014/DOCUMENT-PCI-GUIDELINES.pdf (last visited on May 15, 2015).

3 See Notification, G.S.R. 929(E), *available at:* http://qcin.org/nabcb/pop/Reconstituted%20CCP-2014.pdf (last visited on Apr. 10, 2015).

II INSURANCE

In *Chhattisgarh State Power Holding Company Ltd.* v. *Bajaj Allianz General Insurance Company Ltd*.,[4] case the National Commission was hearing a revision petition filed by petitioner, which obtained a group personal accident insurance policy for the benefit of its employees from the insurance company, under which a sum of Rs. 4 lakhs was payable in case of accidental death of any employee of the petitioner/complainant. The deceased employee, who was doing some construction work on an electric pole fell down from the said pole, after which he was declared dead by the medical authorities. The petitioner company paid a sum of Rs. 4 lakhs to the legal representatives of the deceased and claimed that amount from the insurance company but its claim was repudiated on the ground that according to the post-mortem report, deceased died due to heart failure, as he had been suffering from diabetes and heart disease. In the complaint, district consumer forum directed the insurance company to pay compensation but state consumer commission dismissed the said order. The issue before National Commission was whether the deceased died due to heart failure or was it due to an accident?

The National Commission held that this is a case where death has occurred because of an accident, involving fall from an electric pole, 36 inches in height and under the terms and conditions of the insurance policy, the respondent is liable to pay compensation to the legal heirs of the deceased employee. Since in this case, the amount of Rs. 4 lakh has already been paid to the legal heirs of the deceased employee, the opposite party (hereinafter OP) has to pay the said amount to the petitioner/complainant and also a compensation of 5,000/- for mental agony and 1,000/- as litigation cost as ordered by the district forum.

In *Jaiswal Cold Storage & Ice Factory, Gorakhpur, Uttar Pradesh* v. *The New India Assurance Co. Ltd., Uttar Pradesh*,[5] the complainant, through its Proprietor, Jitendra Kumar Jaiswal, Gorakhpur, Uttar Pradesh, is running a cold storage plant, where potatoes were being stored. The complainant obtained an insurance policy from New India Assurance Co. Ltd., OP, for storing of potatoes in its plant, effective from 15.04.1996 to 14.11.1996, *i.e.*, for a period of seven months and the total sum assured was Rs.56,25,000/-. The complainant also got his machinery insured with the said OP for the period 15.04.1996 to 14.04.1997. On 30.08.1996, the complainant informed the OP that one compressor had broken down on 27.08.1996 the complainant informed the OP that there was damage to the stocks, *i.e.*, potatoes, about 13,398.70 quintals, valuing at Rs.40,20,000/- due to breakdown of the compressor of the plant, erratic power supply by the Uttar Pradesh State Electricity Board (UPSEB) and failure of the generating set. The surveyor appointed for assessing the loss stated in its final report that there was no cause, whatsoever, arising under the insurance policy and therefore, the claims submitted by the complainant for a sum of Rs.40,20,000/-

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4 [2014] NCDRC 6; II (2014) CPJ 112 (NC). .

5 IV (2014) CPJ 18 (NC).

was ultimately repudiated by the insurance company, on 30.09.1997. The issue before National Commission was whether the insurance company wrongly repudiated the claim of the complainant?

The commission held that the terms of the policy have to be construed as it is and it cannot add or subtract something. Policy contract is between the parties and both the parties are bound by terms of contract. It may be mentioned here that Machinery Insurance or FOES[6] extension does not include load shedding or rationing of supply by authorities or even erratic power supply. Deterioration of any part of any machine caused by or naturally resulting from normal use or exposure, or loss due to willful neglect or gross negligence of the insured or his representatives is excluded as the term 'accident' in the contract had been defined as "any sudden and unforeseen loss or damage to the plant or machinery". The above said incident occurred due to negligence, inaction and passivity on the part of the complainant itself and therefore, it cannot pass the buck on the other side. Therefore, the complaint was dismissed. In *Bonda Kasi Annapurna* v. *The Branch Manager, Bajaj Allianz General Ins. Co. Ltd.* ,[7] the complainant's husband B.V.V. Nageswara Rao had taken policy of Rs.25,00,000/- (personal guard - individual personal accident policy) for a period of 3 years from 8.12.2006 to 7.12.2009 from OP no. 1 on 3.1.2008, complainant's husband slipped from stairs and sustained fatal injuries which resulted in his death. The OP was intimated and a claim lodged, but it was repudiated. The complainant filed a complaint with state commission alleging deficiency on the part of OP. The OP resisted the complaint and submitted that there was no post-mortem report and no intimation to police. The state commission after hearing both the parties dismissed the complaint against which, this appeal has been filed along with application for condonation of 1163 days delay. The issue before National Commission was whether a repudiation of the claim of the complainant amounted to deficiency on the part of OP?

The commission held that no reasonable explanation has been given for condonation of inordinate delay of 1163 days and therefore, merely because the complainant was from a rural background, inordinate delay of more than 1100 days cannot be condoned. Until and unless this inordinate delay is condoned, merits of the case could not be considered. Thus, since there is no reasonable explanation at all for condonation of inordinate delay of 1163 days, application for condonation of delay is dismissed. When an application for condonation of delay has been dismissed, appeal being barred by limitation is also liable to be dismissed.

In *Vijay Kumar* v. *Bajaj Allianz General Insurance Co. Ltd.* [8] the complainant hypothecated his tractor with OP/respondent, this tractor was insured with OP who was responsible for getting it insured. The tractor met with an accident,

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6 It denotes, 'failure of electricity supply' term in contract.

7 III (2014) CPJ 169 (NC).

8 IV (2014) CPJ 542 (NC).

which was seized by police and was given on 'spurdari'[9] to petitioner. The tractor along with trolley was stolen and FIR was lodged and intimation was also given to OP. As claim was not settled, alleging deficiency on the part of OP, complainant filed a complaint before district forum which had no jurisdiction and as there was non-joinder of necessary parties, complaint was not maintainable. It was further submitted that tractor was insured to cover risk of third party for agriculture purpose only and no premium was paid to recover risk of theft or own damage and tractor was not insured comprehensively and it was also submitted that there was no relationship of consumer and service provider between the parties and prayed for dismissal of complaint. The district forum after hearing both the parties dismissed complaint. The appeal filed by the petitioner was dismissed by the state commission. The issue before National Commission was whether the tractor was insured under the package policy, third party coverage under the policy and theft?

The commission held that this policy does not insure for theft purposes and state commission rightly affirmed this finding, as tractor was not insured comprehensively and theft of tractor was not covered under the insurance policy, hence the complainant was not entitled to any claim on account of theft of tractor, also the counsel for the complainant could not provide any document to prove that he was entitled compensation for theft of the tractor under the welfare fund scheme provided by respondents and in such circumstances, cannot claim any compensation from respondents on the basis of tractor welfare fund scheme. Hence the order held, revision petition filed by the petitioner dismissed.

III HOUSING

In *Delhi Development Authority* v. *D.C. Sharma*,[10] case the Delhi Development Authority (DDA) was alleged for allotment of same flat twice, for harassing the complainant for more than 18 years without any justification and for continuous filing of meritless petitions in different judicial forums in order to cover up its own fault and negligence. Earlier the complainant who was allotted a flat in Narela under DDA's expandable housing scheme in 1997 had filed a complaint before district forum for possession of the said house. The said complaint was dismissed by the forum but in appeal state commission ordered in complainant's favour. The court asked DDA to recover the damages from salaries of "delinquent officials" who had been pursuing the "meritless litigation" and also ordered that out of Rs 5 lakh, Rs 2.5 lakh would be given to the complainant and rest Rs 2.5 lakh would be deposited in the commission's consumer legal aid account. The issue before National Commission was whether there was allotment

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9 Means that the owner has to safeguard the vehical for production in the court till the case is finalised and crime is established against the criminal. The owner cannot sell it or pass it on to others, the property received insuperdari. Also see, s. 451 Cr PC in this regard.

10 I (2014) CPJ 473 (NC).

of the same flat twice to the complainant which amounted to deficiency in service by DDA?

The National Consumer Dispute Redressal Commission (NCDRC) held strict stand towards frivolous and uncalled for litigations and said that if any litigant approaches the court of equity with unclean hands, suppress the material facts, make false averments in the petition and tries to mislead and hoodwink the judicial forums then his petition should be thrown away at the threshold. The court was hearing a revision petition filed by DDA challenging the order of Delhi State Consumer Disputes Redressal Commission *vide* which DDA was directed to return back all the amount of Rs.30,000/- received by it from the complainant and to provide the complainant another flat of the same description, on the same condition in the same locality or nearby. The DDA was further directed that in case no flat is available, DDA will pay, Rs.30,00,000/- to the complainant because of sky rocketing prices, since the flat was booked for Rs.5,03,348/- in the year 1996-1997. Rendering relief to complainant, NCDRC also held that there is no error/ irregularity in the exercise of jurisdiction by the state commission in the impugned order passed by it.

IV FOOD SECTOR

In *Hindustan Coca-Cola Beverages Pvt. Ltd.* v. *Purushottam Gaur*[11] case the complainant approached district forum alleging that Coca Cola Company was responsible for the sale of sub-standard drink. The complainant demanded hefty compensation from the company for deficiency in service. The company, in its defense, argued that there is no evidence that the said bottle was actually manufactured by them. They further contended that the product is spurious and that their bottling plant is of latest technology with high standard of hygiene and there is no question of any insect entering into the bottle. The district forum dismissed the complaint but the state commission accepted the appeal filed by the complainant and granted a sum of Rs.10,000/- in his favour and imposed costs in the sum of Rs.3,000/- upon the company. A laboratory report was also submitted before NCDRC in the matter which said that, "The visual examination of bottle shows one large insect (approximately sized 10mm) floating on top of the bottle; two small insects and several insects body parts are suspended in the fluid". In the report, the laboratory also said that some of the features of the bottle in question were different from a 'Fanta' bottle that was purchased from the market but, to be sure, the laboratory would need bottle samples from the batch code printed on the bottle. The issue before National Commission was whether the company was negligent in producing the bottle as well as the soft drinks called 'Fanta'?

The NCDRC held that as the company did not try to help and provide any assistance to the laboratory personnel and no efforts were made by the company regarding the origin of that bottle. *Prima facie*, it appears that this bottle belongs

11 II (2014) CPJ 580 (NC).

to the company. The commission added that the case stands proved against the company and thereby dismissed the revision petition. While upholding the order of state commission, NCDRC awarded Rs. 10,000 compensation to the consumer who found insects in 'Fanta' bottle.

V DEFECTIVE LIFT

In *Rashmi Handa* v. *OTIS Elevator Company (India) Ltd*.,[12]case the deceased who was working as Director, Research and Analysis Wing under the Cabinet Secretariat where his death occurred due to an accident, which was a result of elevator, malfunction. The family of the deceased approached NCDRC against OTIS Elevator Company (India) Ltd., and the two government organizations, Research & Analysis Wing (RAW) and Military Engineering Services (MES) for damages and compensation. In its defense, OTIS claimed that as per the maintenance contract between MES and OTIS, the employees of OTIS were not supposed to be present and put the blame on lift operators. RAW also defended itself by stating that as RAW is a 'consumer' of the services being provided by OTIS, NCDRC has no jurisdiction to proceed against it. It also stated that RAW is already paying a very high amount as pension dues to the family of the deceased. MES stated that there was no negligence on its part as it sent several letters, personal visits, and reminders to OTIS regarding the defect in the lift but the lift company failed to rectify defects. The issue before National Commission was whether there was deficiency of service by OTIS Elevator Company (India) Ltd?

The NCDRC held all three (OTIS, RAW and MES) liable for gross negligence and deficiency in service and allowed the claim of the complainants. NCDRC observed:[13]

> we allow the claim made by the complainants in the sum of Rs.3,01, 48,195/-, jointly and severally, with interest at the rate of 9% from the date of death. The liability of OP2 (RAW) is limited to 5% of decreetal amount and liability of OP3 (MES) is limited to 25% of the decreetal amount. The rest of the amount will be paid by OP1 (OTIS).

VI MEDICAL NEGLIGENCE

In *Singhal Maternity and Medical Centre, Uttar Pradesh* v. *Nishant Verma*[14] the complainant no. 2/father of complainant no. 1, who had taken his pregnant wife/complainant no. 3 to OP no. 1 for ante-natal care and delivery under OP no. 2 and after tests, complainants no. 2 and 3 were informed that a normal delivery was expected. Complainant no. 3 faced extreme difficulty in conducting normal

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12 I (2014) CPJ 344 (NC).

13 *Id*. para 39.

14 II (2014) CPJ 441(NC).

delivery and child was delivered unhealthy causing paralysis. That occurred because of the medical negligence and deficiency in service on the part of OP at all stages of the medical treatment starting from the ante natal checks to neo natal care. Complainants confined their claim of compensation to Rs.1,00,00,000/- with interest @ 24% p.a. before state commission. State commission partly allowed the complaint and awarded compensation of Rs. 17,00,000/- .The issue before National Commission was whether state commission was justified in passing the impugned order?

The National Commission held that, it was clear that OP no. 2 inspite of being well qualified doctor did not adopt the practice of clinical observation and diagnosis including diagnostic tests in the manner that would have been adopted by a doctor, alone as a specialist, and, therefore, she was clearly guilty of medical negligence. The commission has found OP no. 1 and 2 guilty of medical negligence on lesser counts than concluded by the state commission. The National Commission was not inclined to interfere with the order of the state commission, awarding compensation of Rs.17,00,000/-, and confirmed the same, Hence the appeal was disposed of.

In *Rajiv Gandhi Cancer Institute and Research Centre, New Delhi* v. *Lt. Col (Rtd.) Zile Singh Dahiya*,[15] the OP filed instant appeal challenging award of state commission which allowed the complaint and awarded a lump sum compensation of Rs. 5 lakhs in favour of complainant. Mrs. Krishna Kumari, wife of the complainant, was undergoing treatment for cancer of the cervix. The disease was diagnosed in August 1999 and the patient succumbed to it in February, 2001. The complaint petition filed on 20.4.2001 traverses the events and developments between the surgery at OP no.1 (cancer hospital) on 22.10.1999 and the patient's death on 6.2.2001. Significantly, the return of the patient to OPs on 16.10.2000 was in the light of the following background:[16]

a. The diagnosis in 1999 had been one of cancer of the cervix.

b. The follow up surgery itself was performed by the appellants/OPs in 1999.

c. The reports of tests done in September-October 2000 in the Army Hospital had consistently and unequivocally pointed towards a conclusion that the disease had returned.

Yet, OP chose to consider every test result as merely indicative/ suggestive of metastasis, needing further evaluation. There was no explanation why, significantly, the same reports allowed the Army Hospital, the Apollo Hospital and the Tata Memorial Hospital, to reach a finding of metastasis, independently of each other. It could not be the case of anybody that time was not of the essence. But, the urgency was not reflected in the manner the case of deceased was handled

15 II (2014) CPJ 464 (NC).

16 *Id*. para 27.

by OP. There was no explanation why the patient was not immediately admitted when she arrived on 16.10.2000. Thereafter, till the end of another two months the cancer institute had made no final diagnosis and therefore, had not commenced any treatment. Conduct of appellants clearly falls below the standard of 'an ordinary competent person exercising ordinary skill in that profession'. The issue before National Commission was whether the resultant failure to reach a timely and clear diagnosis, with consequent failure to commence the requisite treatment, amounted to medical negligence or deficiency of service or not?

The National Commission in full agreement with the finding of the state commission held that the failure to provide proper diagnosis and treatment to the patient amounted to medical negligence. It was not unreasonable to expect that such an institution shall subject itself to appropriately higher standards of professional competence and care. Commission disagreed with the findings of the state commission in so far as they relate to the radical hysterectomy performed on deceased at cancer institute in 1999. Findings of state commission, to the extent they relate to the surgery performed at appellant no.1 hospital in 1999, were set aside. Rest of the impugned order of the state commission, was confirmed. Appeal was partly allowed.

VII INTERPRETATION

In *Surendra Mohan Arora* v. *HDFC Bank Ltd.*,[17] case, appellant filed complaint before district forum against respondent no. 1/HDFC Bank for indulging in unfair trade practice on ground of failure to provide professional services to appellant resulting in prepayment of loan to respondent no. 1 seeking to levy a penalty for pre-payment. District forum passed order in favor of appellant. Respondent no. 1 preferred appeal before state commission and the same was dismissed. Revision petition was filed before National Commission, which set aside orders of district forum and state commission. Aggrieved appellant filed review application before National Commission and the same was dismissed. Then appellant filed writ petition before high court questioning validity of regulation 15 of the regulations framed under the Act and the same was dismissed. Hence instant appeal was filed. The issue before Supreme Court was whether Regulation 15 of the Consumer Protection Regulations, 2005 *intra-vires* of section 22 of the Consumer Protection Act, 1986 and whether impugned order passed by high court was justified?

The Supreme Court held that it did not find any dispute that regulations had been framed in accordance with the power conferred under section 30A of the Act on commission, thereby affecting its right to frame regulations. Regulations were framed in accordance with law. Court has minutely gone through regulation 15(2) of the regulations and found that power to deal with review applications lies with commission. Procedure was to be adopted by National Commission, whether review petition would be decided after hearing parties

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17 AIR 2014 SC 2871.

orally or could be disposed of by way of circulation. Supreme Court did not find that any mischief was done by framing the said regulations under section 22 of the Act and could not be said to be *ultra vires* the said Act. Also there was no reason to believe that National Commission by enacting regulation 15 exceeded its jurisdiction or power vested in it under section 30A of the Act, as contended by appellant. It appeared to the Supreme Court for filing appeal by appellant, was only curtail rights of National Commission to adopt procedure whether review petitions would be decided after granting an opportunity of being heard to petitioner. From order of high court, the Supreme Court found that no such request was made in application before National Commission for such hearing. Hence the high court has correctly held that writ petition was misconceived and devoid of merit without even laying basic foundation for having sought an oral hearing of review application. Therefore the appeal was dismissed.

In *Auva Gas Agency through Paul Roluahpuia* v. *Consumer Union, Vairengte South Branch, Mizoram*,[18] a written complaint from the Consumer Union, Vairengte South Branch respondent herein, was submitted to the President, District Forum Kolasib District on 22.08. 12 against M/s Auva Gas Agency, Vairengte the petitioner. In support of their complaint, the complainant furnished complaints which they had received in original from 42 aggrieved consumers. The following points were mentioned in the complaint: (i) Excessive rate for new connection of LPG; (ii) Non-issue of receipt by agency; (iii) Inferior goods supplied; (iv) Non gas lighter is supplied *etc*. The district forum *vide* its order dated 07.12.2012 allowed the complaint and gave the following order: (i) The respondent M/s Auva Gas Agency, Vairengte should return a sum of Rs.770/- to each existing customer on production of consumer card, for excessive price collected from them, within one month from the date of issue of judgment and order; (ii) The respondent should pay a sum of Rs.1960/ to the complainants Consumer Union, Vairengte South Branch to cover the travelling expense of 14 persons at the rate of Rs.140/- to and from Kolasib, within a month from the date of issue of judgment; (iii) The respondent should, issue receipts to all their customers at the time of giving a new connection and for any other transaction with the customers; (iv) The respondent shall repair defective materials supplied by them free of cost or exchange with new ones. They should also ensure that the materials supplied are of good qualities. Aggrieved by the order of the district forum, the petitioner/appellant filed an appeal before the state commission. Along with the appeal a miscellaneous application for condonation of delay was filed where it was dismissed. The issue before National Commission was whether state commission was justified in dismissing the appeal?

The National Commission held that, since two fora below have not given a detailed and well-reasoned order which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction or material

18 II (2014) CPJ 616 (NC).

irregularity. Accordingly, the present revision petition is hereby, dismissed with a cost of Rs.5,000/-. Petitioner is directed to deposit the cost by way of demand draft in the name of 'Consumer Legal Aid Account of this Commission' within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.

VIII BANKING

In *Canara Bank, Thrissur* v. *R. S. Vasan*[19] the case revolves around the question as to whether the complainant had stood guarantor/security for loanee, Shri C. K. Prabhakaran and had mortgaged his fixed deposit receipts (FDR) as security for the said loan. Shri R. S. Vasan introduced one, Shri C. K. Prabhakaran to the Canara Bank, opposite party on 22.6.1996 and the bank extended an overdraft facility to Shri C. K. Prabhakaran in the sum of Rs.1,00,000/- against immovable property to the extent of 12 ½ cents in Kainoor Village owned by Shri Vilasini, the wife of Shri C. K. Prabhakaran. The complainant had no intention to be a guarantor or a surety for the said overdraft facility. However, the term deposit receipt of the complainant was with the opposite party bank in safe custody and the complainant was made to sign some blank papers. When Prabhakaran expired on 7.6.2001, the bank informed the complainant that the overdraft facility had been given on complainant's security and a sum of Rs.1,36,135.50 would be liquidated against his term deposit to which the complainant denied his liability.

The district forum and state commission have decided the case in favour of the complainant and the bank was directed to pay the complainant a sum of Rs.1,48,698/-. The amount adjusted towards the dues with interest @12% p.a. from 2.1.2004 till its realisation and also to pay Rs.1,000/- as costs within two months from the date of receipt of a copy of that order. The state commission dismissed the appeal with costs of Rs.5,000/-. The issue before National Commission was whether the bank has acted fraudulently by proceeding against the complainant and taking no action against the borrower and his family?

The National Commission held that it was difficult to fathom as to why the complainant deposited the said FDRs with the bank. The deposit of the FDR clearly goes to show that it was a case of mortgage by deposit of title deed. There is no such thing to obtain a bond from the surety otherwise; the concept of mortgage by title deed shall stand defeated. Moreover, the complainant signed the blank papers at his own peril as the complainant signed the blank papers, if any, with his open eyes and on his own volition. Even if he has signed the blank papers, he did it at his own peril. The onus lies on the complainant to prove that he/she was made to sign the blank papers fraudulently or under coercion.

Also, it is well settled that it is the choice of the bank to recover the money either from the guarantor or the borrower. It is abhorrent from the principles of

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19 IV (2014) CPJ 555 (NC).

law to say that the bank must first of all recover the money from the borrower and thereafter it can proceed against the guarantor. The order passed by both the fora below was therefore set aside and the complaint dismissed.

In *Noor Islam Mondal* v. *Anklist Exim Inc.*,[20] case the petitioner purchased a gold testing machine from OP for a consideration of Rs 13,72,750/-, after obtaining loan under Prime Minister's Employment Generation Programme (PMEGP 2010 – 2011) Scheme. He found that the machine was not giving right reading regarding clarity of the gold. Therefore, he informed respondents for removing the defects in the said machine. But, respondents did not respond. Ultimately, petitioner served letter upon respondents requesting him to supply one gold testing machine of same description within seven days but that too remained unheeded. Having no other alternative, petitioner filed a consumer complaint before the District Consumer Disputes Redressal Forum, Howrah praying for direction to the respondents to refund Rs 13,72,750/-, including interest thereon and to pay Rs 3,00,000/- towards compensation. But respondents denied all the material allegations stating *inter alia*, that complaint case was not maintainable for lack of territorial jurisdiction. It was stated that petitioner had earlier filed a complaint case before the district forum, Hooghly on the same cause of action, which was rejected by the district forum, Hooghly, for lack of territorial jurisdiction. The district forum Howrah, allowed the complaint and passed the following directions:[21]

> The OP no. 3 be directed to replace the old machine by a new one with same model and same specification together with guarantee certificate for at least 6 months from the date of replacement of the machine or alternatively refund the entire amount (sell value) of Rs.13,72,750/- (cost of purchase of gold testing machine) within 30 days from the date of this order.
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> The dilatory tendency of the OP no. 3 for not attending the fault rectification for more than one year the OP is saddled with a cost of Rs. 50,000/-. The cost so realized, 50% of the same (Rs.25,000/-) shall be deposited to the consumer welfare fund and the rest to be received by the complainant.
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> The OP no.3 does pay compensation of Rs.25, 000/- to the complainant for causing prolonged pain and harassment. The complainant is further entitled to litigation costs of Rs.5,000/-

Being aggrieved, respondents filed appeal before the state commission, which partly allowed the appeal. It directed the respondents to pay Rs 50,000/- towards compensation and Rs 5,000/- towards litigation cost to the petitioner. Aggrieved

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20 IV (2014) CPJ 728 (NC).

21 *Id*. para 5.

by the order of the state commission, petitioner has filed this petition. The issue before National Commission was whether petitioner made false averments before the forum and whether petitioner is entitle for compensation?

The National Commission held that if any litigant approaches any judicial fora by making false assertions in its complaint and tries to mislead the judicial fora, then such litigant is not entitled to any relief in equity. Such petition should be thrown away at the threshold itself. The present petition is hereby dismissed with punitive damages of Rs. 50,000/- for making false averments in the complaint and also for casting uncalled aspersions on the state commission. Petitioner is directed to deposit the cost by way of demand draft in the name 'Consumer Legal Aid Account' of this commission, within four weeks from the date of judgment and in case, if he fails to deposit the cost within the prescribed period, then he shall be liable to pay interest @ 9% p.a., till realization.

IX CONSTRUCTION

In *Subhash Chander Mahajan* v. *Parsvnath Developers Ltd. through its Managing Director*[22] case the complainants booked a three-bedroom residential flat no.1402, measuring 1855 sq. ft in the Parsvnath Privilege and were issued a provisional allotment letter dated 23.02.2007 on agreement that the flat would be completed within a period of 36 months from the date of commencement of construction. It was also agreed that if there was delay in construction of the flat, beyond the period, as stipulated, the Parsvnath Developers/OP would pay to the complainants Rs.5/- per sq.ft, per month, for the period of delay of the agreement. The construction of the said premises was stopped in January 2008 for the reasons known to the OP. The company admitted that there had been a delay in the construction of the project. The complainant wrote a number of letters to the Parsvnath Developers requesting it to explain the status report of the project.

The complainant contended that the OP is liable to pay the loan interest @24% p.a. as calculated from July, 2011, in the sum of Rs.80,74,423/- besides the principal amount of Rs.50,708,998/-. The OP has caused mental agony and harassment in not handing over possession of the flat to the complainants and therefore, is also liable to pay Rs.20.00 lakhs towards damages. The issue before National Commission was whether the OP is liable to pay the loan interest @ 24% p.a. besides the principal amount as well as Rs.20.00 lakhs towards damages?

The National Commission held that the complainants cannot claim interest @ 24% p.a. since they are bound by the agreement entered into between them and the OP. However, the commission relied on *K.A. Nagamani* v. *Karnataka Housing Board*,[23] where the apex court had granted interest @ 18% p.a., wherein the money in respect of the flat was returned. There has been a huge delay of four years in handing over the possession of the premises in dispute with the OP

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22 II (2014) CPJ 719 (NC).

23 I (2012) CPJ 129 (NC).

making profits for itself at the expense of others. Their harassment and mental agony cannot be equated by payment of such inadequate compensation. The OP has played fast and loose with the consumers. Thus, the principal amount plus interest @ 18% p.a. plus few lakhs of compensation will squarely bring the cases within our jurisdiction and therefore, we decide this point in favour of the complainants and against the OP.

In *Puneet Phutela, S/o. Sh. Roshan Lal* v. *The Oriental Insurance Company Ltd*.,[24] case the complainant purchased a truck which met with an accident, on 14.06.2004, during the subsistence of the insurance policy. The surveyor assessed the loss of the truck in the sum of Rs.1,39,587/- for repairs. The Oriental Insurance Co. Ltd., the OP, repudiated the claim of the complainant, on the ground that the driving licence of the driver was found to be invalid. The district forum allowed the complaint and directed the OP, to pay a sum of Rs.1,99,591/- as claimed by the complainant along with interest @ 9% p.a, from the date of lodging of the claim, till its payment. The state commission, however, accepted the appeal filed by the insurance company and dismissed the complaint. The issue before National Commission was whether the insurance company is liable to pay for the losses suffered by the truck in the accident irrespective of the invalid driving license?

The National Commission held that the driving licence goes to show that he was not permitted to drive heavy transport vehicle (HTV) and his license was not valid for truck. The affidavit of Surveyor, Rajeev Kumar Saxena, remains unrebutted on record and we have no reason to disbelieve the same. The order passed by the state commission is well reasoned. It has also taken support from the authority of the Supreme Court in *New India Assurance Co. Ltd*. v. *Suresh Chandra Aggarwal*,[25] The revision petition was dismissed.

In *Emaar MGF Land Limited* v. *Karnail Singh*,[26] case the representative of the appellants induced the respondents/complainants to purchase a plot in its project who assured the respondents that development activity at the site was in full swing and if they booked the plot, the possession thereof complete in all respects would be handed over to them, within a period of 18 months, from the date of execution of the plot buyer's agreement. On such assurances, respondents applied to the appellants for allotment of a residential plot and paid a sum of Rs.5 lakhs, as booking amount on 12.02.2011. Thus, after discount of Rs.1,10,000/-, the total sale consideration, in the sum of Rs.65,30,250/-, was required to be paid by the respondents, towards the said plot. Despite getting part payment till the month of May, 2011, the appellants failed to ensure the execution of the plot buyer's agreement, in the absence whereof, the Bank concerned refused to sanction the loan which was required by the respondents. When the appellants sent a copy of the plot buyer's agreement, the respondents on going through the terms and conditions, were shocked to see that the same were favourable to the appellants

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24 III (2014) CPJ 379 (NC).

25 2009 (3) CPC 12 (SC).

26 IV(2014) CPJ 188 (NC).

party and their rights had been totally ignored. In order to avoid cancellation of the plot and forfeiture of 15% of the total sale consideration, the respondents signed the plot buyer's agreement and sent the same to the appellants.

When physical possession of the plot in question complete in all respects, was not delivered to the respondents by the stipulated date, they visited the site and found that there was no development in the area, in which the plot was allotted. The respondents made number of oral as well as written requests to the appellants, to deliver legal physical possession of the plot complete in all respects, but it failed to do so. Since the appellants had not delivered the possession of the plot, the respondents were not able to construct house thereon and reside therein causing unnecessary financial burden and a lot of mental agony and physical harassment on account of non-delivery of physical possession of the plot. The issue before National Commission was whether the aforesaid acts of the appellants amounted to deficiency in rendering service, as also indulgence into unfair trade practice?

The National Commission held that the appellants aggrieved by the decision of the state commission filed an appeal in the National Commission along with an application seeking condonation of delay of 20 days. For the reasons mentioned in the application, since there is delay of 20 days only, the commission condones the same.

The commission further held that the appellants themselves are not sure as to by which date they will be able to hand over the possession of the plot to the respondents and, after grabbing 95% of cost of plot are sitting over it, whereas respondents are running from pillar to post to get their hard earned money back. Therefore, the act of the appellants in asking the respondents to pay a sum of Rs.5 lakh as booking amount and Rs.5.78 lakh as part payment towards the provisional allotment in the year 2011, without giving them any firm date of handing over of the possession of the plot is a "Deceptive Practice" which falls within the meaning of "unfair trade practice" as defined under the CPA. By not indicating the true picture with regard to their project to the respondents, the appellants induced them to part with their hard earned money, which also amounts to unfair trade practice. Moreover, the appellants by not delivering the legal physical possession of the fully developed plot to the respondents till date, even after having received more than 95% of the price thereof, are not only deficient in rendering service but are also guilty of indulging into unfair trade practice. Such type of unscrupulous act on the part of appellants/builders should be dealt with heavy hands, which after grabbing the money from the purchasers, enjoy and utilize their money but does not hand over the plot, on one pretext or the other.

It is well settled that no leniency should be shown to such type of litigants who in order to cover up their own fault and negligence, go on filing meritless appeal in different fora. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the opposite party of the fruits of the decree must be dealt with heavy hands. The commission calling the present appeal a gross abuse of process of law dismisses the same with punitive damages of Rs.5,00,000/-.

In *M/s Shreenath Corp.* v. *Consumer Education & Research Society,*[27] Shreenath Corporation had constructed a building and had handed over possession of the flats in 1992. Within nine years of purchase, a portion of the building collapsed in January 2001 due to poor quality of construction. Several flat purchasers were killed while other sustained injuries. With the help of Consumer Education and Research Society (CERS), a complaint was filed against the builder, seeking compensation. The commission upheld the complaint and directed the firm to pay compensation ranging from Rs 1.5 lakh to Rs 18.6 lakh, along with 9% interest. The builder appealed to the national commission. The CPA requires a party challenging the order to deposit a certain amount of money when the appeal is lodged. In case of appeals to the national commission, this amount is 50% of the amount awarded or Rs 35,000/, whichever is lower. Accordingly, the builder deposited Rs 35,000/ per appeal. On the builder's application for an interim stay, the national commission granted conditional stay subject to the builder depositing 50% of the principal amount (excluding the interest component), within three months. The builder challenged this interim order before the Supreme Court. The builder argued that since Rs 35,000 had already been deposited at the time of filing the appeal in accordance with the provisions of the CPA, the national commission had no authority to give a direction to deposit any further amount. The issue before Supreme Court was whether the interim order by the National Commission granting conditional stay to the appellant is within its jurisdiction?

The Supreme Court observed that the deposit of Rs 35,000 is a "pre-deposit", payable as a condition precedent to filing the appeal. The objective of this pre-deposit is to avoid frivolous appeals. At the time of hearing the appeal, the commission would have the power to pass suitable interim orders. The commission could exercise its discretion while passing such interim orders to either grant a total stay, or a conditional stay, or refusal to grant stay. The Supreme Court also observed that the amount payable as a pre-deposit and that which is payable under interim order occur at two different stages of the proceedings. The pre-deposit is payable at the time of filing the appeal and has no link with the merits of the dispute. In contrast, the direction to make a further deposit is passed during the hearing of the application for interim stay, and is determined on a consideration of the merits of the appeal, the balance of convenience, and whether irreparable loss would be caused to a party seeking a stay. The Supreme Court accordingly concluded that the interim order passed by the national commission was well within its jurisdiction, and dismissed the builder's appeal.

In *Rajubhai Tank* v. *Bindraben Bharat Kumar Mavani*,[28] while passing strictures against a land developing firm, its two directors and agent, who had failed to execute sale deed in favour of purchasers of plots even after a lapse of ten years, NCDRC had ordered the firm to execute sale deed within 180 days.

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27 MANU/SC/44459/2013.

28 II (2014) CPJ 290 (NC).

The court was hearing a bunch of 17 revision petitions filed by the developers, challenging the order of state commission rendering relief to the purchasers. Earlier the developers who used to purchase the agricultural land and convert the said land into non-agricultural for residential purpose, purchased one such piece of agricultural land and issued an advertisement for selling plots of 125 sq meters each to buyers in 36 installments. The issue before National Commission was whether agricultural land can be converted in non-agricultural land and can sell as plot?

The National Commission held after perusing all the evidences including the order of high court, NCDRC said it was crystal clear if the premium was paid, land would become non-agricultural and there would not be any other opinion with regard to this aspect. The petitioners should have anticipated at the time of acquiring this land in the year 2004 or prior to that, what would be the condition/prevailing situation. They should have made it clear in the allotment letter that this premium to the collector would have to be paid by the consumers. The said condition was not shown to us. After keeping the money of the people for 10 years, the developers want to return the same, with interest @ 9%. They have not shown the willingness that they want to pay the difference in the rates prevailing in the year 2004 and 2014. The consumers cannot purchase a plot like this, after the expiry of 10 years for a sum of Rs.2, 00,000/- each. Considering the act of developers an unfair trade practice, NCDRC directed developers to get the agricultural land into non-agricultural land within 90 days and to execute sale deed within 180 days. It also imposed costs upon developers of Rs. 10,000/- be paid to each of the purchasers

X RAILWAYS

In *G.M. Northern Railway State Entry Road, New Delhi* v. *Manoj Kumar*, [29] the respondent/complainant booked a three tier AC ticket for travel from Allahabad to Delhi in Lichchavi Express. The date of travel was 08.03.2013. It is the case of the complainant that on 08.03.2013 when he reached Allahabad junction at the time of departure of train mentioned in the ticket, he found that service of the said train was cancelled. On inquiry, he was told that aforesaid train was not running for last few months. The respondent filed a consumer complainant. The petitioner/opposite party appeared before the district forum on hearing dated 17.10.2013 when he was supplied with copy of the paper book and the matter was adjourned to 03.01.2014. On 03.01.2014, the petitioner failed to put in appearance. Accordingly, petitioner / opposite party was preceded *ex parte* and the complaint was allowed with following directions: "OP was proceeded ex-parte. The forum considered the complaint. It is clear case of deficiency on the part of the OP in issuing a ticket from internet without updating information on internet about its non-availability of the services. This has resulted in direct harassment to the complainant by his booking the train and reaching the station

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29 IV (2014) CPJ 557 (NC).

and postponement of showing. In reply to RTI inquiry from the complainant railways has informed him that train was cancelled on 29.12.2012 *vide* message no. EO/194/NR on 27.02.2013 and this cancellation was further extended. This clearly proves the deficiency on the part of the OP in providing correct and updated information of train schedules. Keeping in view the nature of deficiency and inconvenience caused to consumer and many other like him. The forum awarded compensation of Rs.25000/- to the complainant including litigation expenses. By the impugned order passed by the forum the petitioner filed the revision petition. The issue before National Commission was whether there was deficiency in service by railways?

The National Commission held that the ticket was booked by the complainant on internet on 14.02.2013 for the travel dated 08.03.2013. It is the case of the petitioner in his revision petition that running of train in question was cancelled by the railway officials from 01.01.2013 to 17.02.2013 and cancellation was further extended till 15.03.2013. The least expected from the railway was to intimate the respondent / complainant about the cancellation of running of train on 13.02.2013 in order to save him of unnecessary trouble to visit the railway station to board the train which was not cancelled. This is gross deficiency in service on the part of the petitioner / opposite party. Therefore, the commission did not find any fault with the orders of the fora below in allowing the complaint and awarding the compensation. In view of the discussion above, the commission finds no reason to interfere with the impugned order in exercise of the revisional jurisdiction. Revision petition was therefore, dismissed.

XI CONCLUSION

The Ministry of Consumer Affairs, Government of India has proposed amendments to the Consumer Protection Act, 1986 by considering the landmark decisions of Supreme Court, National Consumer Commission and suggestions of Consumer Chair, NLSIU. The Consumer Protection Amendment Bill, 2014 is before the parliament. The Consumer Protection Act, 1986 will become very strong and effective after 2014 amendment.