

ROLE OF JUDICIARY IN THE PROTECTION OF CONSUMER

Dr.Nimmi

Incharge,Department of Law
Punjabi University Regional Centre,Bathinda

“The execution of the laws is more important than the making of them”.¹

THOMAS JEFFERSON

The Judiciary in India performs various important functions and role which does not remain confined within water tight compartment. The importance of the judiciary in democratic society can hardly be exaggerated. It is a part of democratic process. It not only administers justice, it protects the rights of the citizens and it acts as the interpreter and guardian of the constitution. By the virtue of judicial review it decides the constitutional validity of the laws enacted or of the decree issued. It can invalidate such laws and decrees which are not constitutional. Indian democracy is held up by three pillars-the executive, the legislature and the judiciary and as per the Constitution of India the judiciary is most independent out of the three and is given a wide range of powers so that it is capable of offering justice freely and fairly.

“The glory of justice and the majesty of law created not just by the Constitution-nor by the Courts- nor by the officers of the law- nor by the lawyers- but by the men and women who constitute our society- who are the protectors of the law as they are themselves protected by the law...” ROBERT KENNEDY²

Importance of Consumer Protection

Consumer protection means protection of consumers from various unfair trade practices. The whole-sole motive behind this protection is to avoid exploitation of consumer. This protection can be achieved by following ways:-

- By organizing consumers.
- By providing market information.
- Make them aware of importance of physical safety.
- By avoiding monopoly.
- By preventing malpractices.
- Informing consumers about their basic rights.

¹ Available on <http://www.cambridge.org/core/books/thomas-jefferson-and-executive-power/execution-of-laws-is-more-impotant-than-the-making-of-them-reconciling-executive-power-with-democracy.html> (last visited on 12 July 2022).

² Available on www.brainyquote.com (visited on 22 June 2022).

In *Laxmi Engineering Works Ltd v. P.S.G. Industrial Institute*³ District Forum, State Commissions and National Commission are Quasi- judicial Tribunal brought into existence to render inexpensive and speedy remedies to consumers. Any consumer can go and file a complaint without following formal procedure of a court. The idea was to help the consumers to get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest.

Object of Consumer Protection Act

The Consumer Protection Act seeks to protect the consumer in the following respects:-

- a) The right to be protected against marketing of goods and services which are hazardous to life and property;
- b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, as the case may be, so as to protect the consumers against unfair trade practices;
- c) The right to be assured, wherever possible, of access to a variety of goods and services at competitive prices;
- d) The right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums;
- e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f) The right to consumer education.

In *Charan Singh v. Healing Touch Hospital and Others*.⁴ the Supreme Court observed that appellant ought not to have been condemned unheard after waiting for six long years; the legislative intent, for enacting the legislation, of a speedy summary trial, to settle the claim of the complainant (consumers) has been respected in breach. The spirit of the benevolent legislation has been overlooked and its object frustrated by non-suiting the appellant in the manner in which it has been done by the National Consumer Forum. It was further observed that 'the Consumer Forums must take expeditious steps to deal with the complaints filed before them and not keep them pending for years. It would defeat the object of the Act, if summary trials are not disposed of expeditiously by the forums at the District, State or National levels. Steps in this direction are required to be taken in the right earnest.

In *V. Kishan Rao v. Nikhil Super Speciality Hospital*.⁵ Supreme Court observed that the Consumer Protection Act is for rendering of speedy and simple redressal consumer disputes, which object cannot be subjected to dilution or defeat by way supreme

³ AIR 1995 SC 1428.

⁴ AIR 2000 SC 3138.

⁵ (2010)5 SCC 513.

position of necessity of expert evidence, in respect of cases of medical negligence, irrespective of factual status of a particular case.

Consumer Courts in India

Consumer Court is the special purpose court, in India, that deals with cases regarding consumer disputes and grievances. Its main function is to maintain the fair practices by the sellers towards consumers. There are three types of consumer dispute redressal agencies in India. These are:-

1. **National Consumer Dispute Redressal Commission (NCDRC):** This court works for the whole country and deals compensation claimed exceeds rupees one crore. It is the Apex body of Consumer Courts; it is also the highest Appellate Court in the hierarchy.
2. **State Consumer Disputes Redressal Commission (SCDRC):** A state level court works at the state level with cases where compensation claimed is above 20 lac but up to one crore. The State Commission also has Appellate jurisdiction over the District Forum.
3. **District Consumer Disputes Redressal Forum (DCDRF):** A district level court works at the district level with cases where the compensation claimed is up to 20 lacs.

Who can plead on the behalf of consumer?

Any aggrieved person file complaint. Sec 2(b) of Consumer Protection Act 1986 defines the term complainant as:

- 1) a consumer; or
- 2) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- 3) the Central Government or any State Government; or
- 4) one or more consumers, where there are numerous consumers having the same interest;
- 5) in case of death of a consumer, his legal heir or representative; who or which makes a complaint.

In the case of *C. Venkatachalam V. Ajitkumar C. Shah and others*⁶ Applications were filed by the opposite parties contending that the authorized agent should not be granted permission to appear on behalf of the complainants as he was not enrolled as an Advocate. The consumer Forum considered the applications and held that the authorized agent had no right to act and plead before the Consumer Forum as he was not enrolled as an advocate.

⁶ (2011) 9 SCC 707.

The High Court in the impugned judgment held that a party before the District Consumer Forum/State Commission cannot be compelled to engage services of an advocate. The High Court further held that the Act of 1986 is a special piece of legislation for the better protection of the interests of consumers. The Act has been enacted to give succor and relief to the affected or aggrieved consumers quickly with nil or small expense.

Judicial Decisions for consumer protection

Some important judgments of Apex Court, various High Courts and redressal agencies for consumer protection at District, State and National level has been point out below in various sectors such as in education sector, agricultural sector, electricity, banking etc.

Deficiency in services

Sec. 2 (g) of consumer Protection Act, 1986 defines the word deficiency as “any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.”

According to Sec. 2 (o) of the Act of 1986 “service” means service of any description which is made available to potential 19 [users and includes, but not limited to, the provision of] facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

In *Chief Administrator, H.U.D.A & Anr. v. Shakuntla Devi*⁷ in spite of paying the full consideration of the plot in accordance to terms of the allotment letter the appellant did not give the possession of the plot to the respondent. The State Commission held that the respondent had established deficiency of service by the Appellants as there was delay in handing over physical possession of the plot and was entitled to compensation. The National Commission upheld the State Commission’s order in appeal. The Supreme Court made some essential observations which are also rudimentary for awarding compensation and quantum of compensation in consumer protection cases concerning real estate matters.

- That the essential condition for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. If the Consumer Forum is satisfied with the above condition then it would have to decide the quantum of compensation to which the consumer is entitled.

⁷ (2017) 2 SCC 301.

- There is an obligation on the Redressal Agencies to consider all relevant points for arriving at the compensation to be paid.
- The Supreme Court also refer the case of *Charan Singh v. Healing Touch Hospital and Others*⁸ in which it was held by the Apex Court that there is no watertight compartment in which universal application was laid down regarding calculation of damages.
- Reasonable, fair and proper compensation be granted by the Consumer Forum after considering all the factors of the case.
- In *Ghaziabad Development Authority v. Balbir Singh*⁹ the Apex Court stated that the criteria for granting compensation is different for different cases as compensation cannot be uniform.

In *State of U.P. through Principal Secretary and others v. All U.P. Consumer Protection Bar Association*¹⁰ the Apex Court held that there is need of uniform salary and service conditions in all States and Union Territories. The Central Government directed to take following measures:

- To sanction additional posts to enhance work efficiency. Sanctioned posts being only about one-fourth of that required/ recommended by Staff Inspection Unit,
- To take urgent steps to provide additional space to store files as filing of cases going up by nearly 300%, and
- To state its concurrence about proposed amendment to Rule 11 of Consumer Protection Rules, 1987 relating to salaries, honorarium and other allowances of National Forum.

State Governments unanimously agreeing to adopt model rules prepared by Central Government.

Consumers of Electricity

Deficiency in electricity service setor also comes under Consumer Protection Act, 1986. An electricity service is essential for development process. The Nation's welfare is judged by the energy produced and used by its citizens. Therefore the law must devepol the ways of improving energy efficiency. In the famous case of *Punjab State Electricity Board Ltd. V. Zora Singh & Ors.*¹¹ The respondents herein with a view to obtain supply of electricity energy filed applications and the Board asked them to deposit the security amount. As despite deposit of such security amount and compliance of other formalities electrical energy was not supplied to the Respondents, complaints were filed before various District Forums alleging deficiency in service on the part of the Board. The respondents herein are agriculturists. The Supreme Court held supply and distribution of

⁸ (2000) 7 SCC 668.

⁹ (2004) 4 SCC 65.

¹⁰ (2018) 7 SCC 423.

¹¹ AIR 2006 SC 182.

electricity indisputably are public utility services. Upon the dedication of public utility to public use and in return for the grant to it of a public franchise, the public utility is under a legal obligation to render adequate and reasonably efficient service, without unjust discrimination and at reasonable rates to all the members of the public to whom its use and scope of operation extend and who apply for such service and comply with reasonable rules and regulations of the public utility.

Consumer of Agricultural Products

Even after 15 years of its enactment, the Consumer Protection Act is silent on the question whether a farmer is a consumer. This is because the Consumer Protection Act does not include grievances arising out of commercial transactions and whether agriculture is a commercial transaction depends on facts of each case. The National Commission has indicated certain principles to be applied while deciding disputes relating to agriculture. In *H.N. Shankara Shastry v. The Asstt. Director Of Agriculture*¹² The appellant approached the District Forum by complaining that he purchased 10 bags of paddy seeds from the respondent at the rate 135 per bag for the purpose of sowing and transplanting the seedlings to raise paddy in 7 acres of his land. When he sowed the seeds in the nursery, they did not germinate properly. He made complaint to the respondent; the respondent deputed the Agricultural Extension Officer to inspect the land and to submit his report about the quality of the seeds supplied to the appellant; the said Officer having inspected the spot, reported that the germination was hardly upto 10 to 25%: having received the report, the respondent addressed a letter to the Marketing Officer, National Seed Corporation, Mysore, stating that on account of sub-standard paddy seeds sold to the appellant, the appellant had to leave 7 acres of his land hollow and uncultivated and that the National Seed Corporation was liable to make good the loss. The District Forum on admitted facts having considered the contentions of the parties and the material placed before it, directed the respondent to pay a sum of Rs. 17,500/- to the appellant by way of refunding of the price of the paddy seeds and damages caused to him as a result of the transaction. A further direction was given to pay Rs. 100/- as cost to the appellant. The respondent took up the matter in appeal before the Karnataka State Consumer Disputes Redressal Commission (for short 'the State commission'). The State Commission concurred with the findings recorded by the District Forum but modified the order of the District Forum directing the respondent to pay and refund a sum of Rs. 1,350/-, the price of the seeds, to the appellant with interest thereon at 18% per annum from the date of its purchase. The State Commission also awarded a sum of Rs. 1,000/- as compensation to the appellant. Aggrieved by and not satisfied with the order of the State Commission, the appellant filed a revision petition before the National Commission. The said Commission summarily dismissed

¹² AIR 2004 SC 3474.

the revision petition observing that it did not find any illegality or jurisdictional error in the order passed, by the State Commission.

The Supreme Court held that the question needs to be examined whether the State Commission was right and justified in reducing the amount of compensation? In our view, the State Commission committed a serious error in its approach in expecting the appellant to take steps to avoid loss to him even though admittedly the goods supplied by the respondent were defective. The approach of the State Commission was merely theoretical and not reasonable there being no supporting facts or pleadings in that regard. It may be pointed out that the respondent did not plead before the District Forum or the State Commission that the appellant by taking care or by making alternative arrangement could have saved himself from the loss. The State Commission was also not right in modifying the order of the District Forum merely on the basis that the appellant could have been careful and could have cultivated 7 acres of his land by securing other seeds. It did not keep in mind that the nature of agricultural operation, sowing the seeds in the nursery for germination and transplanting them thereafter in the land depended entirely on the season and the timing required; delay of two weeks in putting the seeds or transplanting them may not be useful and many times it may not help raising paddy crop even if it is sown; may be yield would have been minimum and unviable. Be that as it may, neither there was a pleading nor there was evidence touching this aspect of the matter. The State Commission also has not kept in mind the very object of the Act, which was enacted to better protect the interest of the consumers. The Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. Hence, the impugned order affirming the order of the State Commission is set aside and the order made by the District Forum is restored.

Consumers of banking services

As the development in the banking sector and technological revolution, the banker and customer relationship becomes matter of standard, prompt and quick service. The term 'customer' of a bank is not defined by law. Ordinarily, a person who has an account in a bank is considered as its customer, decided in *Abdul Razak & Anr. v South Indian Bank Ltd.*¹³ For the relationship of banker and customer there should be considerable duration of dealings, casual dealings does not constitute such relations, this view discarded by Kerala High Court in *Joseph Zacharia v Joseph Kuriakose*¹⁴ and laid down that, person who has a bank account in his name and for whom the banker undertakes to provide the services as a banker considered to be a customer.

In *Malti Bhat v State Bank of India*¹⁵ the consumer was a student preparing for the AMIE examination, for that purpose he remitted Rs. 200/- as application fee and

¹³ 2003 (1) CPJ 20 (NC).

¹⁴ AIR 1992 Ker 103.

¹⁵ 1992 (2) CPJ 352 (NC).

exam form, via a bank draft. The application was rejected as the Manager did not sign the draft. The student did not appear for the examination, the National Commission awarded compensation of Rs. 35000/- to the student. In *Ganga Nagar Central Co – operative Bank Ltd. v Pupsha Rani & Anr*¹⁶ respondent opened an account with the bank and deposited money, but after some period his money was not in account and returned by the bank. The District Forum awarded compensation for deficiency in service, which was upheld by the Apex Court in the appeal.

Consumers in Education Sector

Though the education is not commercial activity in this country, treated as traditional & religious duty. Treated as charitable activity. Imparting education has been never treated as a trade or business in this country as has been held in *Unnikrishnan v State of Andhra Pradesh*¹⁷. But due to changing commercial purpose and injustice to students by the educational institutions Maharashtra State Commission, in *Abel Pacheco Gracias v Principal, Bharati Vidyapeeth College of Engineering*¹⁸ directed the College to refund the fees to complainant, who got admission in the Government College. Again in case of *Maharshi Dayanand University, Rohtak v Shakuntala Chaudhary*¹⁹ it was held that, result of the examination declared by the University was erroneous and incorrect. The University defaults from its primal duty. The examinees would clearly be entitled to compensation under the Act for deficiency in the services rendered. Recently, in *Bangalore University v Dattatri S.*²⁰ the result declared by the University, in which mistake committed by the tabulator and candidate who secured sufficient marks for pass declared as fail. It was challenged and National Commission held that, imparting education, conduction examination, revaluation etc. not amount to service. Hence, complainant is not consumer and entitled to relief.

Judicial Review of Administrative Action

The Constitution equips the High Court under Article 226 and the Supreme Court under Article 32 with the power to issue writs of the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto. The power of the Supreme Court under Article 32 is to be used for the enforcement of fundamental rights guaranteed in Part III. The High Courts have power to issue such writs not only for the enforcement of the fundamental rights but also for other purposes. Judicial review of administrative action is a product of English common law.²¹

¹⁶ AIR 2008 SCW 2147.

¹⁷ (1993) 1 SCC 645.

¹⁸ (1992) 1 CPJ 105 (Maha. CDRC).

¹⁹ (1993) 1 CPR 274 (Haryana CDRC).

²⁰ (2010) CPJ 111 (NC).

²¹ Dr. S.P. Sathe, *Administrative law* 353 (Butterworths Publications, New Delhi, 6th edn., 1998).

Appeal in consumer cases

What is the provision for appeal?

- Aggrieved by the Order issued by the District Forum, appeal petition may be filed before the State Commission within 30 days from the date of receipt of Order.
- Aggrieved by the Order issued by the State Commission, appeal petition may be filed before the National Commission within 30 days from the date of receipt of Order.
- Aggrieved by the Order issued by the National Commission, appeal petition may be filed before the Supreme Court of India within 30 days from the date of receipt of Orders.

In the case of *Omprakash Vs. Asstt. Engineer, Haryana Agro Industries*²² the appeal has been filed, against an order passed by the 'National Commission', established under the Consumer Protection Act, 1986. Setting aside the orders passed by the State Commission and the District Forum, and dismissing the petition of complaint filed on behalf of the appellant against Respondent. The appellant booked a tractor with the respondent and deposited an amount of Rs 2500 as an advance on 12-12-1990. Although in the list of the persons to whom the tractors were to be supplied, the position of the appellant was against Serial No. 1, the said respondent, according to the appellant, went on supplying tractors to others, who were below the appellant in the said list. In the meantime, there was a rise in the price of the tractor and ultimately when the tractor was supplied to the appellant on 21-9-1991, the appellant had to pay Rs. 2,27,664. In this process, the appellant suffered a loss of Rs. 40,690 for no fault of his and due to the conduct and practice adopted by the respondent. A complaint under the Consumer Protection Act was filed on behalf of the appellant, before the District Forum. The District Forum, on consideration of the materials produced on behalf of the parties, came to the conclusion that the respondent intentionally did not deliver the tractor to the appellant, although the appellant was prepared to purchase the same. It was also held that the respondent supplied the tractors to others who were below the appellant in the list of booking and because of the delay; the appellant had to pay an extra amount of Rs. 40,690. A direction was given to the respondent to refund Rs. 40,690 along with the interest at the rate of 18% per annum with effect from 21-9-1991. A compensation of Rs 2000 was also directed to be paid to the appellant for the harassment and mental agony caused to him due to the unfair trade practice indulged by the respondent.

The appeal filed on behalf of the respondent before the State Commission was dismissed, affirming the finding that because of the unfair trade practice adopted by the

²² (1993) 3 SCC 504.

respondent, by delaying the delivery of the tractor to the appellant, the appellant had to pay an extra amount of Rs 40,690.

The National Commission, however, held that the mere fact “that there has been delay in the delivery of the tractor, will not constitute ‘unfair trade practice’ under the definition of the said expression contained in the Consumer Protection Act”. The petition of complaint filed on behalf of the appellant was dismissed. The National Commission did not point out in its order, as to why in the facts and circumstances of the case it shall not constitute ‘unfair trade practice.

The laws intended to protect consumers, as opposed to traders, are comparatively of recent development. Because of general lack of information on the part of consumers, many trade practices may result in causing loss or damage to the consumers. It is well known that many of the traders having advanced information, or on speculation regarding the rise in the price of different articles, in order to avail the increase in the price, withhold the supply of different goods or articles to the consumers. In this process they cause loss or damage to consumers by making them to pay the excess price which they would not have been compelled to pay, if the goods or articles had been supplied in time. The object and purpose of the Consumer Protection Act is to save the consumer from such unfair conduct and practice of the traders also. On the materials produced, the District Forum, the State Commission and the National Commission have to examine the grievance of a consumer that by adopting an unfair conduct or practice, a trader has wronged him and has compelled him to pay an excess amount.

Conclusion

It is observed that present consumer movement has been developed tremendously. Constitutional object; justice, liberty and equality in the society sought to be achieved by this consumer movement. In *Lucknow Development Authority v. M. K. Gupta*²³ the importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly to the market economy. It attracts to remove helplessness of a consumer which he faces against powerful business. This Act aims to protect the economic interest of a consumer. It is a milestone in history of socio economic legislation and is directed towards achieving public benefit. The commercialization in various sectors, particularly in degree or diploma from reputed education institutions is still awaited for justice. The role of media also contributed lot in making awareness of public through advertisements like Jago Grahak Jago at the root level of the society. The philosophy of the justice as enshrined in the Constitution came to be true by this consumer movement in last 2-3 decades.

²³ AIR 1994 SC 78.