

DEFECTIVE GOODS AND  
DEFICIENCY OF SERVICE  
VIS-À-VIS  
CONSUMER

G.K.KAPOOR

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*Editors :*

S.S. Singh

Rakesh Gupta

Sapna Chadah

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# DEFECTIVE GOODS AND DEFICIENCY OF SERVICE VIS-À-VIS CONSUMER

## INTRODUCTION

The moment a person comes into this world, he starts consuming. He needs milk, clothes, oil, soap, water and many more things and these needs keep taking one form or the other all along his life. Thus, we all are consumers. When we approach the market as a consumer, we expect value for money, i.e., right quality, right quantity, right prices, information about the mode of use, etc. But there may be instances where a consumer is harassed or cheated. He may be supplied with goods which do not perform as per their description or have one or more defects. Likewise, in case of services, there may be deficiency.

When the world was younger and communities smaller, consumer resistance was virtually unnecessary to ensure fair trade practices. Unfair trade was almost impossible in the life-style of those times. One could not comfortably cheat someone in the market place in the morning and break bread with him the same evening.

The industrial revolution and a shift in population from rural areas to towns and the anonymity of urban living gave plenty of scope for malpractices. Consumption came to mean more than just eating, drinking and wearing clothes. It extended to cover the whole business of life and living.

Consumer education began with the realization that hardly any goods or service in the world exists that some man cannot make a little worse and sell a little cheaper. Consumer resistance, initially, took the form of comparative or selective shopping – taking one's custom elsewhere, or returning the shoddy product for exchange if the shopkeeper could be prevailed upon to agree to it.

Things have changed over a period of time. Consumer today is much better informed about his rights. He is aware of the forum he should choose to enforce his remedies in the most efficient and least expensive way. The purpose of this write-up is to further strengthen this awareness as well as make those who are still ignorant and not aware of their basic rights and remedies and how

to avail them in the best possible manner.

Ram purchased a bottle of popular brand of jam. Luckily, before opening the bottle he spotted a house-fly. As a smart consumer he did not opt for mere exchange with another bottle. He instead approached a Consumer District Forum. He was awarded a compensation of Rs.10,000. The Consumer Court rejected the plea of the manufacturer that the consumer having not consumed the jam had not been harmed and, therefore, the only relief he could ask for was exchange with a new bottle. However, the Court held that had the bottle been opened, company would have never accepted its fault and might have suggested that it was a move to bring a bad name to the company. House-fly in a consumable item was a serious health hazard and it, therefore, warranted punitive damages to be awarded.

Likewise, a soft drink which was found to be fungus infected was held to be defective thereby entitling the consumer to claim relief [*Naryanan Vyankatkrishnan Iyengar v. Shakti Foods* (1994) 2 CPJ 652 (Mah.).

Again, bursting of a pressure cooker causing injury to the user shall allow the buyer to claim compensation for defective goods [*T.T. (P.) Ltd., v. Akhil Bhartiya Grahak Panchayat II* (1996) CPJ 239 NC].

Aforesaid cases offer a few illustrations of defective goods and the remedies awarded by the consumer courts.

### **Legislations for Consumer Protection**

In view of a number of undesirable and unfair trade practices being followed by producers and distributors, Governments have resorted to certain legislations designed to protect the interests of the consumers, almost in every part of the world. In U.K., for instance, the Trade Description Act, 1968 prohibits the use of misleading description of goods or services or misleading representation of price reductions. Similarly, such practices have been checked in Sweden through 'The False or Deceptive Marketing Practices of Goods Act, 1971'. Also, in 1972 was passed the 'Food Products Law' which was concerned with the handling and packaging of foodstuffs, both domestic and imported. In a number of countries, the pro-consumer legislations provide for compensation for loss or damage suffered by a consumer because of certain prohibited practices. This is true of

the Sherman Act and the Clayton Act of the U.S.A., the Trade Practice Act of Australia, the Combines Investigation Act of Canada, the Act against Restraint of Competition in Spain, etc.

In some countries statutory bodies are empowered to require the advertiser to substantiate the claims made in the advertisements. For instance, the Federal Trade Commission (FTC) of the United States can seek affirmative disclosures. That is, if information in an advertisement is considered insufficient by the FTC, the Commission may require a company to disclose in its advertisements some of the deficiencies or limitations of its product or service so that the consumer can judge the product's negative, as well as positive attributes. The FTC can also require the advertisers to submit, on demand by the Commission, data to back up advertising claims for a product's safety, performance, and quality or price comparability. The intent of the substantiation is to help consumers make more reasoned choices by having information available to them. Members of many industry groups including automobiles, appliances, soaps and detergents, television sets, hearing aids, and all over the counter drugs have been ordered to provide the Commission with documentation in support of their designated advertising claims. Corrective advertising requirements have increasingly been a part of many FTC consent orders. Corrective advertising documents are based upon the notion that inaccurate information has already been communicated by advertisers, and that corrective advertising is needed to eliminate the lingering effects of such information.

The *Warner-Lambert v. Trade Commission* is an interesting illustration. In that case, the FTC had issued an order requiring the Warner-Lambert to cease and desist from advertising its product, "Listerine" – mouth-wash, as a preventive, cure or palliative, for the common cold. The FTC also directed that in all future advertising, both print and electronic, Warner-Lambert must include the following corrective statement.

"Contrary to prior advertising, Listerine will not help prevent colds or sore throats or lessen their severity." In addition, the FTC required that the statement be included in all Listerine advertising until the company has spent \$10 million on advertising, a sum equivalent to that spent on publicizing Listerine from April 1962 to

March, 1972. The Court of Appeals upheld all the Commission's orders except the required use of the phrase "Contrary to prior advertising."

### **Legislations for Consumer Protection in India**

In India, a large number of legislations have been enacted over all these years to safeguard the interests of the consumers. These legislations are designed to control product, supply, distribution, price and quality of a large number of goods and services. Government has also been empowered to regulate the terms and conditions of sale, nature of trade and commerce, etc.

The Consumer Protection Act was enacted in 1986. Section 3 of the Act provides that 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. Thus, this Section presumes that there were some laws for the protection of consumers, prevailing before the enactment of the Consumer Protection Act, 1986. This Act has not overridden or repealed those laws. In fact, the provisions of this Act are in addition to any law prevailing before the commencement of this Act.

### **Important Acts**

Important legislations designed to protect consumers' interests include:

Essential Commodities Act, Prevention of Food Adulteration Act, Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, Trade and Merchandise Marks Act, Indian Contract Act, Sale of Goods Act, Standards of Weights and Measures Act, Bureau of Indian Standards Act, Agricultural Produce Grading and Marking Act, Drugs and Cosmetics Act, MRTP Act (now sought to be repealed), Competition Act.

Let us note main features of some of the aforementioned legislations.

#### **Indian Contract Act, 1872**

The purchase (or sale) of goods is, *inter alia*, (i.e. besides other laws) governed by the provisions of the Indian Contract Act, 1872. To

constitute a contract, there must be an agreement between at least two parties, viz., buyer and seller. An agreement is composed of two elements – offer and acceptance. The party making the offer (or proposal) is known as the offerer; the party to whom the offer is made is known as the offeree.

The Indian Contract Act, 1872 offers protection to the consumer by declaring those contracts which are the result of fraud, misrepresentation, coercion, undue influence or even mistake as either voidable (i.e., terminable) at the option of the party aggrieved or void-*ab initio*. In other words, the purchaser, if defrauded by the seller misrepresentations about quality, price, etc., can seek to terminate the transaction, that is, he can claim refund of price. Besides, he can also claim damages for willful misrepresentation of the seller.

### **Sale of Goods Act, 1930**

Although this legislation is meant to regulate the sale of goods thereby protecting the interests of both sellers and buyers, yet in essence it can well be said to be a legislation primarily in the interest of the buyers – the consumers.

Section 14 to 17 of the Act have been designed to protect the interests of the buyers in terms of granting them the remedy of avoiding the transaction, besides the claim for damages, in case certain conditions are not satisfied. The following conditions and warranties are deemed to be incorporated in every contract of sale of goods unless the terms of contract show a contrary intention.

- 1) **Condition as to title or ownership:** There is an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. As a consequence of this, if the title turns out to be defective, the buyer is entitled to reject the goods and claim refund of the price as well as damages.
- 2) **Sale by description:** Where goods have been sold by description, there is an implied condition that goods must correspond to description. In case sale is by sample as well as by description, the goods must not only correspond with the

sample but also with description.

- 3) **Condition as to quality or fitness:** This condition offers exception to the rule of 'caveat emptor' i.e., let the buyer beware. This condition becomes operative where the buyer makes his purpose known to the seller and depends on seller's choice who happens to be regularly trading in that commodity.
- 4) **Condition as to merchantability:** This condition protects a buyer against any latent or hidden defects in the goods, i.e., defects which could not be spotted by ordinary physical examination of the goods.
- 5) **Goods to correspond to sample:** Where the sale is described as a sale by sample, this condition requires the 'bulk' to be in accordance with the sample. Besides, the bulk must be merchantable even though sample was un-merchantable.
- 6) **Warranties:** Section 14(b) and 14(c) of the Sale of Goods Act contain provisions whereby a buyer is entitled to claim damages in case the right of quiet possession of a buyer is disturbed or the goods purchased turn out to be subject to a charge, say, hypothecation.

Besides, Sections 57 to 59 entitle the buyer to exercise certain rights for non-delivery of goods or for any other breach of the contract. These rights include claim for damages, specific performance, etc.

### **The Agricultural Produce (Grading and Marking) Act, 1937**

Agricultural Produce (Grading and Marking) Act, 1937 was enacted to provide for

- a) grading and standardization of agricultural commodities
- b) regulation of marks and marking practices
- c) market research and surveys, and
- d) training of personnel in agricultural marking.

The Act provides for the establishment of a Directorate of Marking and Inspection to look into the above objectives.

The main commodities graded are vegetable oil, ghee, creamery, butter, eggs, wheat flour, rice, cotton, potatoes, gur, maize, honey, ground spices. Laboratory facilities for fixing grade standards for new products and for the existing grade standards, when

necessary, are provided by the Central Agmark Laboratory at Nagpur and sixteen regional Agmark Laboratories in Kolkata, Mumbai, Chennai, Kanpur, Cochin, Bangalore, Patna, Rajkot, Guntur and other centres. Grading of agricultural produce at the farmer's level and that of 'kapas' at the producer's level are undertaken by different grading units and centres in different states. Compulsory grading is done before export in the case of specified commodities. The grading goods are stamped with the seal of the Agricultural Marking Department – AGMARK.

### **The Essential Commodities Act, 1955**

In the interest of the general public, this Act empowers the Central Government to:

- i) regulate production, supply, distribution, storage, transportation, etc.; and
- ii) control price of commodities which have been declared under the Act, as essential.

To ensure compliance of the provisions of the Act and the orders passed thereunder, penalties are provided for those who commit offences under the Act.

### **The Prevention of Food Adulteration Act, 1955**

This law was enacted to eradicate the anti-social evil of food adulteration and ensuring purity in the articles of food. It provides for constitution of a Central Committee for Food Standards to advise the Central and State Governments on matters arising out of the administration of the Act and to carry out other functions assigned to it.

The Act has some general provisions as to food and incorporates certain provisions as regards analysis of food. For this purpose, the office of a Public Analyst has been created. The duty of the Public Analyst is to analyse the sample of food sent to him.

Further, the Act provides that purchaser of any article of food, or a recognized consumer association, (whether the purchase is a member of that association or not) can get such article analysed by the Public Analyst.

The Public Analyst shall send the report of the results of analysis of any article of food to the Local (Health) Authority. If the

food article as per report is found to be adulterated, prosecution proceedings against the person from whom the sample was taken shall be instituted.

### **The Trade and Merchandise Marks Act, 1958**

This Act provides a comprehensive law in tune with consumer protection relating to registration and better protection of trade marks in the country. Also, it provides for the prevention of the use of fraudulent marks on merchandise in the interest of the consumer in particular and the public in general.

### **The Standards of Weights and Measures Act, 1976**

As the title of the Act suggests, it aims at introducing standards in relation to weights and measures used in trade and commerce. The ultimate objective is to subserve the interests of the consumers. The Act, therefore, is essentially a consumer protection measure as every article of manufacture, subject to the standards of weights and measures under the Act, ultimately finds its application or use by or for the benefit of consumer.

By amending the Act in 1986, the consumer associations (whether or not the consumer is a member of the association) have been empowered to make a complaint under the Act.

The Act makes special provisions as regards packaged commodities. Also, the Standards of Weights and Measures (Packaged Commodities) Rules have been framed. Now-a-days, commodities, including foodstuffs, are being made available in a ready-to-use condition, off-the-shelf, in packages. This trend of making a large number of items available in a pre-packed condition is picking up very fast. Here comes the question of protecting the interests of consumers. As the commodity is pre-packed, a consumer does not know at the time of purchase, as to the quantity, quality, type, number and size of the contents. Therefore, it is necessary to provide certain rules which are to be observed by the manufacturers' dealers concerning packaged commodities.

### **The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980**

This Act is a supplement to the Essential Commodities Act, 1955. The object of this Act is to deal with certain malpractices that

the unscrupulous elements like black-marketers, hoarders, profiteers may indulge in. Its penal provisions are very stringent.

Under this Act, the Central Government, State Governments and specified officials of the Government have been empowered to order detention of a person who is found to be acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community.

The maximum period for which any person may be detained in pursuance of any detention order cannot exceed 6 months from the date of detention.

However, the person detained has a right to know the grounds of his detention, vide Section 8, unless disclosure of the grounds is considered against the public interest in general.

Further, Section 16 grants protection to the authorities for having taken action in good faith. It provides that no suit or other legal proceedings shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

### **MRTP Act, 1969 and Competition Act, 2002**

Monopolies and Restrictive Trade Practices Act (MRTP) was passed in 1969 to ensure that operation of economic system does not result in the concentration of economic power to common detriment. The Act also provided for control of monopolies and prohibition of monopolistic and restrictive trade practices. Subsequently, provisions in respect of Unfair Trade Practices were inserted w.e.f. 1.8.1984. After the Government of India decided to liberalise economic policy, provisions in respect of concentration of economic power were deleted by omitting Part A of Chapter III of MRTP Act w.e.f. 27.9.1991. Only powers to order division of undertaking or to direct severance of inter-connection of undertakings were retained, but these powers have been hardly used. After omission of these powers, MRTP Commission became a toothless tiger and was looking after cases relating to unfair trade practices and restrictive trade practices.

However, all over the world, it was found that private monopolies can be detrimental to national economy and control is

required. It is now felt that fair and free competition is required for growth of healthy economy.

As per Preamble to the Act, the Competition Act is to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

Thus, main purpose of the Competition Act is to ensure free and fair competition in market.

In particular, the Act is designed for the following purposes –

(a) Prohibition of anti-competitive agreements (b) Prohibition of abuse of dominant position and (c) Regulation of combinations. A quasi-judicial authority named ‘Competition Commission of India’ is to be constituted. The Commission shall consist of judicial as well as non-judicial members to give Competition Commission of India (CCI) an overall perspective. On receipt of complaint or reference, Competition Commission of India can issue order to Director General to investigate. His report will then be considered by the Competition Commission of India. The Competition Commission of India will hear the concerned parties and then pass necessary orders. The Competition Commission of India will sit in benches. Each bench will consist of at least one judicial member of rank of Judge of High Court. The Competition Commission of India is empowered to recommend division of dominant enterprises. It can order de-merger in case of merger/amalgamation that adversely affects competition. Suitable powers are given to Commission and penalties are prescribed to ensure that orders of Commission are obeyed. Jurisdiction of Civil Court is barred and appeal to Supreme Court can be made only if substantial question of law is involved.

### **The Consumer Protection Act, 1986**

In the aforesaid paragraphs we have noted that inspite of host of legislations; none of them could be described as consumer specific. They have been designed to provide reliefs in specific situations only. None of them, for example, provided for rights of consumers, a separate judicial machinery for looking into complaints.

*Caveat Emptor*, i.e., 'Let the buyer beware' continued to be the governing rule. The helpless and harassed consumer did not really get effective remedies. Consumer remained the king only in the literature on economics. The seller/ manufacturer/supplier continued to roll the roost.

With the enactment of Consumer Protection Act, 1986 the scenario has undergone a change. Rights of consumers have been given a statutory recognition. Three-tier grievance redressal machinery at the District, State and National level has been constituted. Consumer is sought to be installed as a king.

The Indian Parliament enacted this legislation in December, 1986. It came into force on April 15, 1987. By July 1987, all the provisions came into operation.

The object of the legislation, as the Preamble of the Act proclaims, is for better protection of the interests of consumers. During the last few years preceding the enactment there was in this country a market awareness among the consumers of goods and services that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for Consumer Redressal Fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumers from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier redressal machinery has been constituted under the Act comprising of the District Forum, the State Commission and National Commission for redressal of grievances of consumers.

Emboldened by the legislation, enacted in 1986, consumers have been flooding these Redressal Agencies with petitions relating to dead phones, malfunctioning television sets, delayed LPG cylinder connections, losses due to strikes in banks and hospitals, medical malpractices, bad pressure cookers, loss of agricultural crops due to power breakdown, unkept promises and what you have.

You, being a consumer, must know as to how the provisions of this Act can be used as weapons in your armoury to fight your day-to-day battles in the market place.

### **Salient Features of the Consumer Protection Act, 1986**

*Salient features of the Act are:*

- 1) The Act aims to provide better and all-round protection to consumers.
- 2) In terms of geographical application, it applies to the whole of India except the State of Jammu and Kashmir.
- 3) It applies to all goods and services unless otherwise expressly notified by the Central Government.
- 4) It is indeed a very unique and highly progressive piece of social welfare legislation and is acclaimed as the magna carta of Indian consumers. The Act has made the consumer movement really going and more powerful, broad-based and effective and people-oriented. In fact, the Act and its Amendments in 1993 and 2002 have brought fresh hope to the beleaguered Indian consumer. This is the only law which directly pertains to market place and seeks to redress complaints arising from it. Its provisions are very comprehensive and highly efficacious.

In fact, it provides more effective protection to consumers than any corresponding legislation in force even in countries which are considered to be much more advanced.

- 5) It provides effective safeguards to the consumers against different types of exploitation such as defective goods, unsatisfactory (or deficient) services and unfair trade practices.

### **Meaning of Consumer**

Reliefs under the Act are available to consumers only. Therefore, we must categorically know the meaning of a consumer.

‘Consumer’ as per Section 2(1)(d), means any of the following persons:

- (1) A person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment. The term *includes* any other user of such goods when such use is made with the approval of the buyer.

The expression ‘consumer’, however, *does not include* a person who obtains such goods for resale or for any commercial purpose.

- (2) A person who hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The term *includes* any other beneficiary or such services with the approval of the first-mentioned person. But, a consumer does not include a person who avails of such services for any commercial purpose.

‘Commercial purpose’ does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment [*Explanation to Section 2(1)(d)*].

Therefore, to be a ‘consumer’ under the Act:

- (i) the goods or services must have been purchased or hired or availed of for consideration which has been paid in full or in part or under a system of deferred payment, i.e., in respect of hire-purchase transactions;
- (ii) goods purchased or services hired/availed of should not be meant for re-sale or for a commercial purpose. Thus, where a vehicle has been purchased for the purpose of running it as a taxi (except where purchased by a person to earn his livelihood), the purpose being commercial, the buyer shall not be a ‘consumer’ under the Act [*Western India State Motors v. Subhag Mal Meena and Others (1989)*].

Any economic activity or transaction carried on with the motive of making profit would fall under the term commercial purpose, irrespective of the scale of operations.

In *S. Pattabhirame v. Sp. S.T. Palanippan* (Order dated 3.5.1994), the National Commission held that an X-ray machine purchased by a private company comprising of qualified medical practitioners amounts to a purchase for a commercial purpose and hence the company cannot be regarded as a consumer under the Consumer Protection Act. However, in *Synco Textiles Pvt. Ltd. v. Greaves Cotton & Co. Ltd.* (1991), the National Commission observed that the main determinants of the character of a transaction – whether it is for a ‘commercial purpose’ or not are the immediate purpose as distinct from the ultimate purpose of purchase/sale in the same form or after conversion and direct nexus with profit or loss. Thus, buyers of

goods or commodities for 'self-consumption' in economic activities in which they are engaged were held to be consumers under the Act. But, debentures if purchased for resale shall make transaction for commercial purpose.

### **Are the following consumers?**

#### **1 Winner of a lottery**

The question was considered in the case of *Byford v. S.S. Srivastava* [1993]. In this case Byford Motors inserted an advertisement in newspapers stating that a person booking a Premier Padmini Car could enter into a contest in a lottery conducted by them. Under it a person who was successful in the draw would be entitled to two free tickets from New Delhi to New York and back. Shri S.S. Srivastava was one of the persons who was successful in the draw. He asked the dealers, M/s. Byford Motors, to give him the value of two tickets which was refused and he was asked to produce two passports to enable them to book the tickets. The complainant, however, produced one passport immediately but the second after the end of the financial year. M/s. Byford Motors refused to give the tickets on the ground that accounts of the financial year had been closed and that they could not carry forward the liability of that year to the next financial year under the provisions of the Income-Tax Act and Rules.

*Held*, that the complainant was not a consumer within the meaning of Section 2(1)(d) of the Act. He had received the car for which he had paid and there was no complaint as to its condition.

Receiving air tickets to New York was an additional attraction attached to the sale, which depended upon a lottery draw. It is not an intrinsic part of the contract deal for which payment was made. Thus, as far as lottery was concerned, it could not be said that complainant was a consumer who had hired any service for consideration and hence, he had no right to get redressal under the Act.

The complainant's argument that this would fall under unfair trade practice as in Section 36A(4) of the MRTP Act, 1969, was also not accepted.

## **2 A person registering for gas connection**

The National Commission in *Mohindra Gas Enterprises v. Jagdish Poswal* (1992) held that registering for gas connection amounts to hiring of services. Reference was made to the Manual of the Indian Oil Corporation which states that an LPG customer gets continuing or recurring services like loan of the Corporation's equipment, delivery of refill cylinders, technical service for appliance or leakage of equipment, and so on. But, can a person be upheld as a consumer at the stage of registration or only when he signs subscription voucher and makes deposit for LPG connection. To this, National Commission observed as follows:

Service as defined in sub-clause (o) of sub-section (1) of Section 2 means "service of any description which is made available to potential users". The consumer who hires a service has been defined in clause (ii) of Section 2(1) of the Act, according to which it is not necessary that consideration should be paid at the time of hiring of service. If the transaction is supported by consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment, even then it will be a valid consideration for the hiring of the service. The present case is one in which payment of part consideration was deferred till the gas connection was released.

Hence, a person becomes a consumer of LPG right at the time of registration for an LPG connection.

## **3 Warranty of free service**

In *Vishwa Jyoti Printers v. Molins of India* [1992] a warranty of free service for one year was given at the time of sale of a printing machine. The seller of the machine contended that since he was rendering free service for the maintenance of the machinery for one year under the warranty, the buyer was not a 'consumer' under the Consumer Protection Act.

*Held*, the warranty was a part of the composite contract for supply of the printing machine and its maintenance for a period of one year. The consideration for service to be rendered under the warranty is obviously included in the sale price of the machine. There could not be an agreement, including warranty, without consideration. It was wrong to maintain that warranty obligations

were being rendered free of charge.

#### **4. Passengers travelling by trains**

In *General Manager v. Anand Prasad Sinha* (1989), it was held that passengers travelling by trains on payment of the stipulated fare charged for the ticket are 'consumers' and the facility of transportation by rail provided by the railway administration is a 'service' rendered for consideration as defined in the Act.

#### **5. Subscribers of Telephones**

Subscribers of telephones would be 'consumers' under the Act and accordingly are entitled to seek relief from Forums wherever necessary [*Dist. Manager, Telephones, Patna v. Lalit Kumar Bajla* (1989)].

#### **6. User of Electricity**

User of electricity is a consumer. The National Commission in *Y.N. Gupta v. DESU* (decided on 16.11.1992) considered a complaint regarding the inflated electricity bills served by DESU on the complainant. In this case, DESU did not raise the bills in keeping with the cycle normally adopted. It also did not replace the defective meter. However, it issued a bill for Rs.1.06 lakhs for a period of 1 ¼ years. The power connection was also disconnected but restored after a complaint with the General Manager.

#### **7. Allottee of a flat as nominee of the Government**

In *A.M. Ghewede v. Dhondiram Salonkhe* [decided on 6.10.1995], the Maharashtra State Government framed a scheme whereunder persons who had land in excess of the ceiling prescribed under the Urban Land Ceiling Act, 1976, could construct housing colonies for weaker sections of society and the State Government shall have the right to allot flats to its nominees. The respondent constructed houses on his urban land and allotted one flat to the revision petitioner that the flat suffered from defects, the respondent raised an objection that the petitioner was not a consumer within the meaning of the Consumer Protection Act. The State Commission dismissed the complaint.

The National Commission held that a nominee of the Government of Maharashtra Urban Land Ceiling Act could definitely

be said to be hirer of service. The Government had not hired services of the developer. The developer was under an obligation to construct flats for the weaker sections of the society.

Allotment was to be done by the Government. It was the nominee who paid the consideration for the flat. When the developer received consideration from the nominee it could not be said that there was no privity of contract between him and the nominee. The nominee was the beneficiary of services hired by the Government.

### **8. *User of Sewerage System laid by Municipal Corporation***

In *Parkashwari v. Municipality, Bhatinda* (1995) CCJ 354, it was held that the payment of water and sewerage charges to the municipality amounts to hiring of these services and consequently the user thereof is a consumer.

However, in *Signet Corporation v. Commissioner of Municipal Corporation of Delhi* [decided on 19<sup>th</sup> May 1997], the National Commission held that no complaint under the Act could be maintained against the Municipal Corporation on the ground of alleged failure to discharge its statutory duty of proper maintenance of a public drain. The construction, maintenance and cleaning of drain and drainage works and removal and disposal of filth, rubbish and other polluted matters were works which the corporation was required to undertake and carry out in discharge of its statutory obligation. This was not a work to be performed by the Corporation under an arrangement of hiring of service for consideration entered into between it and any private party.

It further held that the payment of tax levied in exercise of sovereign functions of the State could not constitute consideration even remotely as *quid pro quo* for any service rendered or likely to be rendered.

### **9. *Purchaser of Equipment using it by himself in the practice of his profession***

In *Kody Elcot Ltd. v. Dr. C.P. Gupta* (decided on 19.9.1995), the complainant who was a medical practitioner claimed that he had purchased an ultrasound scanner and the same had stopped functioning within a short period of time. The supplier pleaded that

the complainant was not a consumer in that the scanner was purchased for the purpose of his professional work and that he was making profit out of it. But the complainant claimed that it was being run by his personal skill and to earn his livelihood.

*The National Commission held as follows:*

The question of profit was not relevant. The question to be seen was whether the goods purchased by consumer were being used by himself. The appellant had not led any evidence to the effect that the complainant was not personally using the unit. On the other hand, from the affidavit of the complainant, it was clear that the scanner was used by him by his skill for earning his livelihood. Hence, he was a consumer. The supplier was directed to refund its price.

#### **10. *Parents of an infant-patient – Whether Consumers***

In *Spring Meadows Hospital vs. Harjit Ahluwalia* (1998)(2) SCALE, 456, the Supreme Court observed that there is a direct link between the question, whether there is a consumer dispute and who is a consumer? The Supreme Court held that, a consumer would mean a person who hires or avails of any services and includes any beneficiary. Therefore, when a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of the consumer having hired the services and the child would also become a consumer under the inclusive definition of Section 2(1)(d) of the Consumer Protection Act, 1986 (i.e., being a beneficiary).

#### **11. *Subscriber to a Provident Fund***

The Supreme Court in *P.F. Commissioner v. Shivkumar Joshi* (1999) AIR SCW 4456 held that the administration of the Provident Fund by the Provident Fund Commissioner is a service and every member of a Provident Fund Scheme is a consumer.

Meaning of ‘Defective Goods’ and ‘Deficiency of Service’

#### ***Defective goods***

Under Section 2(1)(f), a defect in goods is defined as any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law

for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

This is an exhaustive definition. It means that the Act recognizes only those defects which are covered by the definition. Any type of defect not mentioned here will not be entertained by Consumer Forums. Moreover, the defect has to be in relation to goods only, i.e., if an item does not fall within the definition of 'Goods', no defect can be complained therein

'Goods' under this Act shall have the same meaning as assigned to them under the Sale of Goods Act, 1930.

Accordingly, 'Goods' means every kind of movable property other than currency and actionable claims; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 2(7) of the Sale of Goods Act, 1930].

### ***Are Shares before allotment goods?***

The Supreme Court in *Morgan Stanley Mutual Fund v. Kartick Das* (1994) 4 Supreme Court cases 225, observed that till the allotment of shares takes place, 'the shares do not exist'. Therefore, they can never be called goods... it is after allotment, rights may arise as per the contract (Articles of Association of a company), but certainly not before allotment.

A ration shop supplied a ration card-holder rapeseed oil adulterated with known toxic adulterants. The complainant, and his family, as a result of that rapeseed oil consumption suffered severely. He was attacked with paralysis of lower limbs and inspite of prolonged treatment he did not recover fully. His wife, inspite of medical treatment, was not able to carry on her ordinary avocation as housewife because of ailment. His two daughters and a son, all growing children were also affected and medical report was that they had severe attack. Their educational carrier was doomed. Considering all these facts, the Commission awarded a sum of Rs.1,50,000/- to the complainant and Rs.50,000/- for his wife and Rs.25,000/- to each of the children resulting in awarding of total of Rs.2,75,000/- (*Barsad Ali v. Managing Director, West Bengal Essential Commodities Supplies Corp.* 1993, CCJ 476).

Again, electric household appliances which are not in accordance with the standards prescribed by ISI, being unsafe, are defective – *Farooq Hazi Ismail Saya v. Gavabhai Bhesania* (1991) 2 CPJ 452 (Guj.).

Other examples of defective goods include:

- (i) Gas cylinder with excessive gas – *Dayanand A. Avasare v. Bharat Petroleum Corpn. Ltd.* (1993) ICPR 278 (Mah.)
- (ii) White marble which changed its colour after polish – *Chitranjan Sahu v. N.C. Jain* (1993) CPJ 1127 (Ori.)
- (iii) EPABX System which failed to function – *HCL Office Automation Ltd. v. Consumer Education and Research Society* (2004) CPJ 63 (NC).
- (iv) Bursting of an air conditioner and thereby catching fire – *Yogeshbhai D. Shridhar v. Consumer Education and Research Society* (2004) CPJ 63 (NC).
- (v) Autorikshaw having a manufacturing defect – *M/s. Scooters India Ltd. and Anr. v. Madhabananda Mohanty & Others* decided by National Commission on 7.2.2003.
- (vi) Seeds which fail to germinate properly – *N. Shankara Shastry v. Asst. Director of Agriculture, Karnataka* (2004) CPJ 37 (SC)

## DEFICIENCY OF SERVICE

Parallel to ‘defect’ in case of goods, deficiency is relevant in case of service. Accordingly, under Section 2(1)(g) of the Consumer Protection Act, 1986 it is defined to mean 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.

A number of *judicial decisions* on ‘deficiency of service’ are available. Some of these are being given hereunder:

- 1 *Maina Devi Bairaia v. Life Insurance Corporation of India* [decided by the National Commission on 11.5.1993]. In this case, Maina Devi’s husband took a life insurance policy for Rs.50,000. Before the second premium fell due, he died due to sudden

illness. The claim made by Smt. Maina Devi, the widow of the insured, was not entertained for as long as 14 years. It was only when she got her miseries published in newspapers and certain MPs took up the matter in Parliament that she was sent a cheque for Rs.50,310.

On a suit before National Commission, it was held that the Corporation had been highly negligent in the performance of its services. Smt. Maina Devi, the complainant, had suffered hardship and loss on account of deficiency in service. She was held entitled to interest @ 12% p.a. from the date of expiry of 3 months from the date of death of the assured till the amount was paid to her. The Commission also awarded her compensation of Rs.15,000 for mental torture and harassment.

2. *Ajmer Singh, Cotton and General Mills v. Manager, United India Insurance Co. and Others* [decided by the National Commission on 13.4.1993]. The appellants were carrying on the business of cotton ginning and processing. They had insured their stocks of cotton kept in their godown with two insurance companies. A devastating fire broke out on 8.6.1990 and almost the whole stock was destroyed. The two companies took nine months and one year respectively to settle the claim.

*Held* that, two months time could be taken as reasonable after the surveyor's report. Nine months to one year was too long a period and, therefore, amounted to deficiency of service. Interest @ 18% p.a. after the expiry of two months from the date of surveyor's report was, therefore, allowed to the appellants.

3. *Telecom District Manager v. Umesh Chandra Patnaik* [decided on 15.3.1993]. In this case, the complainant had alleged that he was not receiving telephone bills regularly and, therefore, on account of non-payment of some bills his telephone had been disconnected.

*Held*, in the absence of any provision in the Telegraph Act, on the basis of the rules requiring that telephone bills should be dispatched by registered post, the Department could not be

said to have committed any deficiency in service.

4. *Skypack Couriers Pvt. Ltd. & Another v. M/s. Anupama Bagla* (1992). In this case, non-delivery of a video cassette by a courier service company resulting in the complainant losing admission to the desired college was held to be 'deficiency' in service as the complainant was put to serious hardship and loss by reason of the neglect and failure on the part of the courier to deliver the article entrusted to them for carriage. Accordingly, compensation of Rs.10,000 was awarded to the complainant.
5. In another case against *Skypack Couriers Pvt. Ltd. v. CERS and Others* (1992), compensation of Rs.1,000 was awarded for non-delivery of consignment containing the complainant's visas, air tickets, passport, etc.
6. *In Lucknow Development Authority v. Roop Kishore Tandon* (1990), the failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be deficiency in service.
7. *Special Machines v. Punjab National Bank* (1989). In this case, mere failure to provide nursing and financing facilities to a small-scale industry which consequently became sick was not held to be a deficiency in service. It was observed that in matters of grant or withholding of further advances and insisting on margin money, banks may exercise their discretion and act in accordance with their best judgment after taking into account various relevant factors. The proper forum to agitate in such cases is a civil court.
8. *Airpak Couriers (India) Ltd. v. S. Suresh* [decided on 11.3.1993]. A consignment of important papers was handed over to the courier M/s. Airpak Couriers Pvt. Ltd. The consignment did not reach its destination. The State Commission held it to be a case of deficiency in service and granted a compensation of Rs. 1 lakh for the loss.

In appeal, the appellant contended that the consignor agreed to the terms and conditions of the courier that its liability was limited and restricted to Rs.100 only, that according to IATA regulations no important documents were to be sent

through courier service and since the consignment was lost in transit they were liable to the extent of Rs.100 only as damages. The consignor was bound to disclose the nature of contents before sending the consignment and the value of the consignment was not specially stated in the column assigned for it in the consignment note.

*Held*, if the documents which were sent were of great value, the consignor ought to have insured them. No such step was taken nor was its value disclosed in the consignment note. It was not clear why the consignor could not have sent duplicate copies of the lost documents when the loss came to light.

The compensation awarded by the State Commission was not justified. Since there had been deficiency of service, sum of Rs.100 only was awarded.

9. *Presidency Post Master, General Post Office v. Shanker* [1993]. To celebrate the 15<sup>th</sup> Anniversary of his hospital, the complainant, medical director of a hospital, posted 600 invitations at the Central Post Office, Madras. Only 200 persons attended the function. It was found that the invitations were received by the addressees after the date of the function. The claimant claimed compensation of Rs.75,000 from postal department for deficiency of service.

The Department contended that the delay, if any, was not intentional or wilful and, therefore, no liability was incurred under Section 6 of the Post Office Act, 1898.

*Held*, the claim petition was not maintainable in view of Section 6 of the Post Office Act, 1898. There was no allegation that the loss, mis-delivery or delay occurred on account of fraudulent or wilful act of any particular postal employee.

Section 3 of the Consumer Protection Act, 1986 clearly lays down that its provisions are in addition to and not in derogation of the provisions of any other law for the time being in force. This shows that the Act provides additional means of obtaining remedy for a consumer but if the remedy is barred under any other Act, then the various fora constituted under the Act cannot grant the remedy prayed for.

10. *Indian Oil Corporation Ltd. v. Venkataraman* [decided on 18.12.1992]. In this case, the State Commission as well as the National Commission held that the supply of a gas cylinder with a defective valve and the failure of the distributor's supply-man to check the defect at the time of delivery amounted to deficiency of service. Accordingly, the Indian Oil Corporation was held liable to compensate for loss of life and injury resulting from fire caused by the leakage from the defective valve. A sum of Rs.1,50,000 was awarded.
11. *State Bank of India v. N. Ravendran Nair* [decided on 3.8.1992]. A demand draft of Rs.98,000 was issued by the State Bank of Travancore on the State Bank of India, Surat. When presented at the drawee branch, the payment was refused on the ground that under the signature of one of the persons signing the draft (accountant), the capacity in which he signed the same was not mentioned. *Held*, the refusal amounted to deficiency in service and the bank should be held liable for the inconvenience and consequent loss to the payee of the draft.
12. *S.P. Dhavaskar v. Housing Commissioner, Karnataka Housing Board* [decided on 27.9.1995]. In this case the complainant booked a house with the Karnataka Housing Board against a deposit of Rs.1.66 lakhs. After five years, the Housing Board informed the complainant that the construction of the houses was not upto the expected level and, therefore, he could either take back the amount of deposit without interest or opt for a new house. The complainant made a claim of Rs.4.65 lakhs.  
The State Commission held that the act of the Housing Board amounted to deficiency in service and returning deposit amount without interest was unreasonable and ordered payment of interest @ 18% p.a. The argument of the Karnataka Housing Board that under its Rules and Regulations, allottees were not entitled to interest was struck down by the State Commission and also by the National Commission against an appeal by the Housing Board.
13. *Punjab Water Supply and Sewage Board v. Udaipur Cement Work* [1995] 6 SCALE 327. In this case the respondent delayed

the delivery of cement by more than 2½ years. On a complaint, the National Commission held that in a transaction of sale and purchase simpliciter question of deficiency of service could not arise and unless there was any defect in the goods supplied, the cause of action the Consumer Protection Act did not arise.

The Supreme Court, on appeal, remanded the case to the National Commission to hear it afresh. The Supreme Court held: “We do not appreciate the blanket observation of the National Commission to the effect that where the transaction is one of sale and purchase simpliciter ‘no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied’. The impugned order of the National Commission is rather mechanical. Counsel for the parties have invited attention to Section 2(c), (d), (f), (g), (o) and various other provisions of the Act. The National Commission should have appreciated the pleadings of the parties in the light of various provisions of the Act.”

14. *Nivrutti G. More v. Dr. Vinayak Deshmukh* [1995] CCJ 981. The failure on the part of a doctor leaving station without making competent alternative arrangements to attend to serious cases was held to be a deficiency of service. Consequently, doctor was held liable for the medicine administered by an unqualified person working as compounder resulting in death of the patient.
15. *H.P. Gupta v. Municipal Corporation of Delhi* [1995] CCJ 349. In August 1992 the complainant had received a notice from the Assistant Assessor and Collector of the Municipal Corporation, Delhi, demanding arrears of house-tax amounting to Rs.1,72,771 upto Rs.31.3.1992. Several letters written by the complainant that no arrears were due from him remained ignored. Instead, another bill was received by him and to the objection raised by him, there was no response. The officer concerned directed the bank of the complainant to freeze his account. The Bank did freeze the account. Despite several notices and several adjournments, no nomi-

nee of the Corporation appeared before the State Commission.

*The State Commission held:*

The facts alleged by the complainant seemed to be correct. Despite his letters, the Corporation, without proper investigation into the matter, got the bank account of the complainant frozen. Though, the account was later de-frozen the Commission held it to be a case of deficiency of service and awarded Rs.5,000 as damages.

16. *Punjab National Bank v. Tej Rajinder Singh* [1997] CCJ 1165

The bank issued two FDRs in the joint names of two persons payable to “either or survivor”. On the death of one of the joint holders the survivor complainant asked the bank to pay the amount to him. But the bank did not release the amount on the ground that the deceased had guaranteed repayment of a loan to a company and a civil suit was pending before a court. Allowing his complaint the District Forum held that on the death of one of the joint holders the complainant had acquired the status of survivor and as such he became lawfully entitled to receive the payment and had become absolute owner of the two deposits. It was also held that the deceased had not created any lien on the amount of FDRs. Both the District Forum and the State Commission came to the conclusion that the complainant became the full owner in respect of the FDRs and denial of payment of their proceeds on maturity with interest was deficiency in service.

The National Commission endorsed the decisions of District Forum and the State Commission and held that the payment instructions on the FDRs were “either or survivor”. The complainant, on the death of the joint holder of the FDR, became their absolute owner by survivorship. The forums below were right in holding that the complainant had become full owner of the FDRs and had a right to maintain the complaint because of the deficiency in service by not paying the amount.

17. *Satish Mehra v. Punjab & Sind Bank* [1997] CCJ 1252 (Delhi).

The State Commission held that conversion of a joint fixed

deposit account into an individual account of one of the joint holders without instructions from both the joint depositors amounts to deficiency of service on the part of the bank.

18. *Sudha Devi Agarwalla v. Unit Trust of India* [1996] CCJ 1293.  
In October 1993, Unit Trust of India had declared that master shareholders would be eligible for redemption of shares at the rate of 49.70 per share and that necessary documents for redeeming the shares should be filed between 1.11.1993 and 30.11.1993 if a shareholder wanted to redeem his shares. The complainant who had 14,300 shares lodged all the necessary documents against redemption value of Rs.7,10,710. There was delay in repayment of the redemption value of the shares. The State Commission ordered payment of Rs.7,10,710 plus Rs.2,60,000 as compensation and Rs.1,000 towards costs.  
7However, in *Unit Trust of India v. Ms. Kavita Gupta*, the National Commission in its decision of 24.1.1997 held that it is only the loss suffered on account of non-delivery of unit certificates that can be recovered. No presumption loss (e.g. loss on account of fall in the price of units subsequently) based on principles of lost opportunity shall be available.
19. Highly inflated electricity bills and defective electricity meter in the case of *Y.N. Gupta vs. DESU*, the National Commission considered a complaint regarding the inflated electricity bills served by DESU on the complainant. In this case, DESU did not raise bills in keeping with the cycle normally adopted. It also did not replace the defective meter. However, it slapped the bill for over Rs.1.06 lakhs for a period from 21<sup>st</sup> December, 1988 to 25<sup>th</sup> March, 1990. The power connection was also disconnected but restored after making a complaint to the General Manager. The National Commission ruled that it was difficult to envisage a situation where the consumer could have utilized over 1 lakh units of electricity and expect a poor consumer to pay bills of over a lakh. The National Commission ruled that the bills were casually prepared. DESU did not have the authority to raise bills upon a defective meter beyond six months under the Electricity Act, 1910. In these circumstances, the National Commission concluded that there

was deficiency in service on the part of DESU and awarded a compensation of Rs.30,000 and costs of Rs.5,000.

20. Government servants not doing any service for consideration but a statutory function. In the case of *S.P. Goel v. Collector of Stamps*, it was held that a government official does not render any service in the course of doing his statutory duties. Hence, no remedy can be granted under the CPA. In this case, the complainant presented before the Sub-Registrar a document claiming it to be a will for registration. The Sub-Registrar did not register the document claiming it to be a deed of conveyance and hence not adequately stamped. He impounded the document and sent it to the Collector of Stamps for action. Despite several notices issued to him by the Collector, the appellant did not appear before him. When the appellant appeared before the Collector he was asked to furnish certain other documents. In the meantime, however, the appellant filed a complaint before the District Forum under the Consumer Protection Act alleging harassment by the Sub-Registrar and Collector and prayed for compensation being awarded to him.

The District Forum held the view that the appellant having paid registration fees, he shall be treated to have hired the services of the Sub-Registrar and Collector and since the Collector had not taken any decision as to the nature of the document for about six years, allowed compensation to be paid to the complainant.

On appeal by Collector, the State Commission, upheld the order of the District Forum and enhanced the compensation to Rs.5,000/-.

On the revision petition filed by the Collector, the National Commission held the view that the appellant was not a “consumer” under the CPA because there was no hiring of services by the complainant for consideration and because a government official doing his duty as functionary of the State under law could not be said to be rendering a service to the complainant. It stated that assuming the Collector was discharging a service, he was doing the same as a functionary of the government under the authority of the statute and for

the benefit of the revenue for which he was being paid by the Government and not by the complainant.

The Supreme Court upheld the order of the National Commission on appeal.

21. **Maintenance of Guest House – Not for commercial purpose.** In the case of *J.K. Puri Engineers v. Mohan Breweries & Distilleries Ltd.*, it was held that a guest house maintained for company officials is not for commercial purpose and hence benefit under the CPA can be availed of. The company maintained a guest house for use of its managing director and other executives. It entered into a contract with the appellant for the installation of a central air-conditioning system. The company alleged that the system installed did not function properly, developed snags, and that there was leakage of water from the dusting system. The appellant having failed to make good the defects, the complainant appointed a consultant and obtained from him a report on the working of the system which pointed out a number of defects. The State Commission held that the complainant was a consumer under the CPA as the air-conditioning system had not been installed for a commercial purpose because the guest house was not maintained for a commercial purpose. The National Commission upheld the decision of the State Commission.
22. **Failure to deliver houses by the Housing Board is deficiency in service.** In the case of *S.P. Dhavaskar v. Housing Commissioner, Karnataka Housing Board & Vice-versa*, the complainant had made a deposit of Rs.1.66 lakhs with the Housing Board for a house proposed to be built by the Board. He was told that the construction be completed within two years from March, 1987. In March, 1992 he was informed that the construction was not upto the expected level because of the use of low cost technology and that the houses constructed developed defects and might not long and suggested that the complainant might take back the amount of deposit without interest or opt for a new house in lieu of the house already allotted. The complainant made a claim of Rs.4.65 lakhs which was rejected. The State Commission held

that the act of Housing Board amounted to a deficiency in service and returning deposit amount without interest was unreasonable and ordered payment of interest at 18% p.a. In appeal, the National Commission upheld the order of the State Commission.

23. **Failure to provide basic safeguards in the swimming pool** amounted to deficiency in service. In the case of *Sashikant Krishnani Dole v. Shitshan Prasarak Mandali*, the National Commission held that failure to provide basic safeguards in the swimming pool amounts to deficiency in service. A school owned a swimming pool and offered swimming facilities to the public on payment of a fee. The school conducted winter and summer training camps to train boys in swimming and for this purpose engaged a trainer/coach. The complainants had enrolled their only son for learning swimming under the guidance of the coach. It was alleged that due to the negligence of the coach, the boy drowned and died. The school denied any responsibility on its part. The coach claimed that he had considerable experience in coaching young boys in swimming. When the deceased was found to have been drowned, the coach immediately took him out of the water and removed the water from his stomach and gave him artificial respiration and thereafter took him to a doctor. The doctor advised that the boy be taken to the nearest hospital where the boy died. The State Commission held the school and the coach deficient in rendering service to the deceased. On appeal, the order was upheld by the National Commission.
24. **Failure to settle provident fund claim in time** amounts to deficiency in service. In the case of *Regional Provident Fund Commissioner, Faridabad v. Shiv Kumar Joshi*, it was held that failure to settle provident fund dues on time amounts to deficiency in service.
25. **Removal of ladder of an aircraft while disembarking by the passenger** amounts to deficiency in service. In the case of *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir*, the National Commission held that removal of ladder while a

passenger was disembarking, leading to injury to the passenger amounted to deficiency in service. The Complainant after he was seated on the plane, was intimated by the announcement that part of his luggage was lying on the ground unidentified. He moved towards the door and finding that the ladder was in place, tried to get down. But before he could get his entire body on the ladder, the ladder was moved as a result of which he fell to the ground and sustained injuries. The passenger demanded compensation of Rs. 10 lakhs from the Airlines. The Airlines was willing to pay Rs.40,000/- which was the maximum amount payable under the Carriage by Air Act, 1972. The State Commission ordered a compensation of Rs. 4 lakhs and Rs. 1 lakh for mental agony and distress plus costs. The order of the State Commission was upheld by the National Commission.

26. **Imparting education is not a service.** In the case of *Chairman, Board of Examinations v. Mohideen Abdul Kader*, the complainant, a student who wished to appear in the subject of production technology was denied permission to write that paper by the hall supervisor on the ground that his name appeared against Code No.2 while the paper fell under Code No. 1. He alleged that he was wrongly restrained and prevented from writing the examination on that day because of the attitude and negligence of the staff and, therefore, he claimed compensation for the inconvenience caused to him. The National Commission in its order stated that a candidate who appeared for an examination could not be regarded as a person who had hired or availed of the services of the university or board for consideration. Therefore, he was not a consumer under the CPA and no compensation was awarded.
27. In the case of *Poonam Verma v. Ashwin Patel*, it was held that a doctor qualified under the homeopathic system of medicines treats a patient with allopathic medicines, he is guilty of negligence and compensation is due if the patient dies on such account.
28. In the case of *Bharathi Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Limited*, it was held that the

liability of the courier company in case of delayed delivery of articles was limited to the amount of damages agreed to under the contract.

29. In the case of *Department of Posts & Telegraphs v. Dr. R.C. Saxena*, it was held that there is deficiency in service where the Post Office refuses to pay interest on deposits simply by invoking technical rules. In February 1988 the consumer opened a national savings scheme account in the General Post Office in Lucknow. In March, 1989 he opened a similar account at Chamba (H.P.) depositing Rs.90,000. On his retirement from service he got both accounts transferred to Kangra. When he wanted to close the account by withdrawing the balance, the post office refused to grant him interest on the Rs.90,000/- deposited by him in his second account on the ground that under the NSS rules, one person can have only one NSS account. The National Commission held that the opening of the second account was merely an irregularity not amounting to contravention of the rules that the investor was entitled to interest on the second deposit.
30. In the case of *Union of India v. Nathmal Hansaria*, it was held that the railways are liable for deficiency in service when a person passing through the inter connecting passage way between two compartments of a train fell down resulting in death.
31. In the case of *Harshad J. Shah v. Life Insurance Corporation of India*, it was held that the Life Insurance Corporation could not be held liable for lapse in policy due to non-payment of premium even if the premium was paid on time to the agent of LIC but was not paid by him to the LIC within the prescribed time.

### **Deficiency of Service due to circumstances beyond control**

In normal course, if the service is found deficient as per the above criteria, it is held deficient and the compensation is awarded. However, there may be abnormal circumstances beyond the control of the person performing service. If such circumstances prevent a person from rendering service of the desired quality, nature and the

manner, such person should not be penalized for the same.

**Example:** 'A' undertook to supply water to 'B' for irrigation of crops. Due to power grid failure of the State, 'A' could not get sufficient power to perform the service. Here 'A' cannot be held liable for deficiency in service.

However, negligence on the part of performer may not be excused under the cover of circumstances beyond control.

**Example:** 'A' agreed to supply water to 'B' for irrigation of crops. He failed to do so because of a power breakdown due to burning of transformer. As a result crops damaged. 'B' sued 'A' for providing deficient service. The National Commission held that it was duty of 'A' to get the transformer repaired immediately. Since he was negligent in doing so, he is liable for the deficiency in service. *Orissa Lift Irrigation Corpn. Ltd. v. Birakishore Raut* [1991] 2 CPJ 213 (NC).

### **Nature and Scope of Remedies available to Consumers**

To provide simple, speedy and inexpensive redressal of consumer grievances, the Act envisages a three-tier quasi-judicial machinery at the District, State and National levels. At the District level, there are to be District Fora as the redressal fora. The State Government may, if it deems fit, establish more than one District Forum in a District. At the State level, there are to be similar redressal commissions to be known as State Commissions and at the National level, there is a National Consumer Disputes Redressal Commission to be known as National Commission.

### **Complaint Defined**

Section 2(1)(c) of the Consumer Protection Act, 1986 defines the term 'complaint' to mean any allegation in writing made by a complainant that:

- (i) any unfair or restrictive trade practice has been adopted by a trader;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from some deficiency in any respect;

- (iv) the trader has charged for the goods a price higher than the price fixed or displayed on the goods or the package containing them or under any law for the time being in force;
- (v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force, requiring traders to display information in regard to the contents, manner and effect of use of such goods.

When the price of any article is not fixed by any law or displayed on the goods or the package containing them, the Act does not contemplate any complaint being instituted in respect of the price charged on the ground that such price is excessive.

In *Consumer Unity and Trust Society in State of Rajasthan* (1992) ICPJ, 259, the National Commission held that a 'complaint' under the provisions of the Consumer Protection Act, 1986 arises only if the services as defined in Section 2(1)(c) of the Act have been hired by a consumer as defined in Section 2(1)(d)(ii) of the Act to attract the provisions of the Act. Further, it must suffer from a deficiency.

### **Who can file a complaint? [Section 12]**

Any of the following persons may file a complaint under the Act:

1. The *consumer* to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided.
2. Any *recognized consumer association*, namely, any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. It is not necessary that the consumer is a member of such association.
3. *One or more consumers*: where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested.
4. *The Central or the State Government*.

### **What complaints may be lodged? [Section 2(1)(c)]**

A complaint may relate to one or more of the following:

- (i) That an unfair trade practice or a restrictive trade practice has been adopted by any trader;
- (ii) That the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) That the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) That a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or on any package containing such goods;
- (v) That goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

### **Where to file a complaint?**

- 1 If the value of goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs, then the complaint can be filed in the District Forum within the local limits of whose jurisdiction the opposite party actually resides or carries on business or has a branch office or personally works for gain or where the cause of action, wholly or in part, arises (Section 11).
- 2 If the value of goods or services and the compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore, the complaint can be filed before the State Commission (Section 17).

Where a joint petition is filed on behalf of a large number of victims, it is the total amount of compensation claimed in the petition (and not the individual claims) that will determine the question of jurisdiction. In case the total compensation claimed exceeds, presently, Rs.20 lakhs but does not

exceed Rs.1 crore, the matter can be heard by the State Commission [*Public Health Engineering Department v. Upbhokta Sanrakshan Samiti*].

*The State Commission shall also have the jurisdiction to entertain appeals against the orders of any District Forum within the State (Section 17).*

3. If the value of goods or services and the compensation, if any claimed exceeds rupees one crore, complaint can be filed before the National Commission (Section 21).

*The National Commission shall also have the jurisdiction to entertain appeals against the orders of any State Commission (Section 21).*

### **How to file a complaint?**

The complaint should be accompanied with such amount of fee and payable in such manner as may be prescribed.

The complainant or his authorized agent can present the complaint in person.

The complaint can also be sent by post to the appropriate Forum/Commission.

The complaint should be addressed to the President of the Forum/Commission.

A complaint should contain the following information:

- (a) the name, description and address of the complainant;
- (b) the name, description and address of the opposite party or parties, as the case may be, as far as they can be ascertained;
- (c) the facts relating to complaints and when and where it arose;
- (d) documents, if any, in support of the allegations contained in the complaint;
- (e) the relief which the complainant is seeking.

The complaint should be signed by the complainant or his authorized agent. Minimum four copies of the complaint should be filed.

### **Reliefs Available to Consumers (Section 14)**

If, after the proceedings conducted under Section 13, the

District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegation contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from defects;
- (c) to return to the complainant the price, or as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restricted trade practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to cease manufacture of hazardous goods and to desist from offering, services which are hazardous in nature;
- (j) to pay such sum as may be determined by it if it is of the opinion that loss of injury has been suffered by a large number of consumers who are not identifiable conveniently:  
*Provided that* the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers:  
*Provided further that* the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;
- (k) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- (l) to provide for adequate costs to parties.