

CHAPTER 4

Educating Consumers about Their Rights

4.1: Introduction

Globalisation of the world economies has widened the freedom of both consumers and producers through the world over. The consumers, in particular, are given more importance in respect of their rights. Developed economies are the torch-bearers in enacting consumer protection laws. Not only the developed world the developing economies too, have accelerated the pace of law making for the greater interest of the consumer community. Developing countries like China, Sri Lanka, Taiwan, Thailand, Korea, Mongolia, Philippines, Mauritius, Nepal, Indonesia, Malaysia and others have made legislations in order to protect the interests of their consumers. The Government of India in 1986 has enacted its Consumer Protection Act, 1986. The main object of this legislation, among others, is to ensure the better protection of consumers. The provisions under this Act are compensatory in nature and the Act, in fact, intends to provide simple, speedy and inexpensive redressal to the grievance of consumers. At the global level, **the Consumer International**, an international organization of consumer unions persuaded the United Nations to adopt a set of guidelines for consumer protection in 1985. The guidelines address the rights and interests of consumers throughout the world and provide a framework for promoting consumer protection. In this context, the guidelines highlighted on seven important areas such as physical safety, protecting and promoting economic interest of consumers, standards for the safety and quality of consumer goods and services, measures enabling consumers to obtain redress, measures to some important areas such as food, water and pharmaceutical and consumer education and information programme. The UN guidelines as mentioned are not static and therefore are more flexible under changed social, political and economic circumstances.

The present chapter aims to discuss some important aspects that are extremely essential for consumers to make them knowledgeable and aware them about their rights relating to the quality of products they purchase, or the services they buy, redressal against

unfair trade practices or unscrupulous exploitation of consumers through consumer disputed redressal adjudicatory bodies at the district, state and national levels.

4.2: Educating Consumers

The present age is the age for both consumers and producers. In this era of open economy buyers and sellers come face to face. It is said that under full and free competition and open economy world goods are exhibited by the sellers. Buyers after thorough examination/ scrutiny buy the product. Under such a market condition, there should not be any asymmetry in information either from the sellers or from the consumers. Sellers know who are the buyers, what strategies to be followed in the sale of their product, what constraints to be faced if bad quality products are sold etc. Similarly, the consumers know the price as well as the quality of the goods they are considering buying at a price at a point of time.

Any decision-making unit makes a choice in the light of more or less inadequate information popularly known as asymmetric information. Joan Robinson, in her **Further Contributions to Modern Economics**, 1986 (Indian Edition, Disha Publications, Delhi - 09) has informed us that full information regarding the correct choice can never be available because basic data do not and cannot exist. She states, "There is no certain knowledge about the future, not even certain knowledge of probability distributions. There are expectations (or guesses) formulated with greater or less care; and unfortunately those formulated with greater or less care; and unfortunately those formulated with the greatest care are by no means always the most accurate".

In the present day world of vast expansion of trade and its globalisation the personal relation between the buyer and seller which was an important factor in their relations does not hold true. It is not just possible for a consumer to examine the quality of the good before hand; because now most of the transactions take place through correspondence. Although we are talking about globalisation and free competition of goods and services between the buyers and sellers i.e. we believe that there exists free or perfect market competition. In fact we don't really have such a market form; rather we have a market structure known as monopolistic competition or oligopoly market where seller only can assure the quality and

more or less determines the price of the product. This shows that the seller becomes more and more strong due mainly to the complex structure of modern goods.

Moreover, all the sellers are more organized and strong in order to improve their bargaining power. Contrarily, the consumers are unorganized and weak in their bargaining power. In the present age of information technology and wider applications of e-commerce in trade and business transactions consumers are being really deprived, misled, and deceived. This becomes more intense especially among the illiterate and less-informed people of developing countries like ours. In the less-developed economies consumerism is thus in the infancy stage. Most of the consumers are not well informed about the quality of products, price of the commodities, protection against bad quality products, etc. thus, due to lack in education, information resources, testing facilities, competent leadership, price control mechanism, and adequate quasi-judicial mechanism (S.S. Singha and S. Chadah, IIPA: Consumer Protecting in India) the providers of Goods and services have been reluctant in providing protection to the interests of the consumers.

Consumerism is not a war between the sellers and the buyers. It is in fact wide range of activities of government, businesses and independent organizations aimed to protect the interest of consumers.

We are now in a position to discuss some important issues/ aspects through which consumers can be made more educated and knowledgeable to protect their rights.

4.3: Role of Voluntary Consumer Organisations

The rapid industrial growth due to the effects of the efforts of R & D teams throughout the world the goods which previously were catering to our demand have been replaced by complex and complicated new goods. This has made consumers perturbed and confused when they find that the goods or services they bought are not in good order. This calls for a strong and wider consumer movement in order to provide necessary legal protection to the affected consumers. Voluntary Consumer Organisations can, in fact, organise consumers and encourage them to safeguard their interests. Also the business enterprises act as voluntary 'self-regulators'. They may serve consumers' interest and

provide benefit to them, although some businesses in our country have adopted a code of conduct for controlling/ regulating their own activities.

4.4: Increasing Consumer Awareness

Consumers should be made aware about the protection needed against the marketing of goods which are hazardous to life and property. The consumers, irrespective of their status and educational qualifications, should be informed about the quality, quantity, potency, purity, standard and price of goods and services they purchase. This will in fact protect the consumers against unfair trade practices. The price at which the consumer purchases a good should be competitive. The government should assure that consumers have access over the variety of goods at competitive price. This will certainly save the consumers from unscrupulous exploitation from the part of sellers. It is stressed that consumer council if constituted may be a good platform where consumers can put their grievances. This organization can be established on public– private – partnership (PPP) basis and this can review the grievances raised by consumers and thereby review the policy of consumer rights protection.

The council can also provide feedback to consumer courts at three levels i.e. district consumer court, state and national commissions. Consumers are also advised to attend seminars, workshops relating to consumer awareness and consumer rights protection. The central and state governments have accepted to introduce consumer education in school curriculum. There are some states where this curriculum has been accepted in order to make students knowledgeable about consumer rights and their protection.

The central government through the **Consumer Welfare Fund (CWF)** undertakes consumer educational programmes with the help of consumer groups or state government. **The Consumer Welfare Fund** has another provision for providing funds in the name of “**Consumer Club Scheme**” the sole objective of such a scheme is to educate children about the rights of the consumers, protection of their rights, and to strengthen the consumer movement in every corner in the country. This scheme was introduced in 2002. The media can also play a significant role in educating consumers through advertisement. The radio, television, internet, newspaper etc. have been doing extremely well in educating consumers in spite of lot of problems such as multiplicity of languages, religions, social customs.

Consumers are the victims of many unfair and unethical practices adopted in market place. There is no perfect match between the untrained selling goods and services. Naturally, consumers are very often cheated in the quality, quantity and price of goods or services and have been transformed from 'kings of the market' into the "victims of circumstances". Only educating consumers can help reducing asymmetries in information or knowledge about market affairs.

4.5: Safeguarding through Enacting Legislations

Our government has taken a number of legislative measures in order to safeguard the interests of consumers. All such measures can be classified as follows: (i) statutory regulation of private business, and (ii) development of the public sector. The government has enacted several statutory legislations such as Indian Contract Act, 1872; Sale of Goods Act, 1930; Agricultural Produce (Grading and Marketing) Act, 1937; Industries (Development and Regulation) Act, 1951, Prevention of Food Adulteration Act, 1954; essential Commodities Act, 1955; Essential Service Maintenance Act, 1968; Monopolies and Restrictive Trade Practices Act, 1969; Standard to Weights and Measures Act, 1976; Bureau of Indian Standard Act, 1986; Environmental Protection Act, 1986; Consumer Protection Act, 1986.

4.6: Some landmark Judgments of Apex Court

To implement the Consumer Protection Act, 1986 Quasi Judicial Authority from district level to national level were empowered to redress the consumer complaint and dispute vide Chapter-III of the C. P. Act, 1986 which came into force with effect from 01.07.1987 in the whole of India except Jammu & Kashmir whereas other chapters II and IV of the Act came into force on and from 15.04.1987 but for effective operation of the Act for the benefit of consumers and to give whole time President to run the Consumer Fora in fact from Government side there was no positive approach till passing Judgment passed by the Apex Court in the year 1993 on the basis of the case filed by common cause a NGO concern and truth is that by that Judgment Apex Court passed some strict directions to the Government to follow up action for running regular Forums in all the districts by appointing whole-time President and other Members in terms of the prescription of the Statute and the

Apex Court by that Judgment also directed the Government to strictly comply the directions and in case failure in future, contempt action may be initiated for violation of order of Apex Court and after that Government took initiative and regular Fora's present appearance is found .The above Judgment also reveals that Apex Court also realized the need for proper implementation of the C. P. Act for the benefit of the consumers.

After enactment of the Act, the Government undertaking like Bank, Insurance, transport and Corporations took a strong plea like the promoting and development Authority took plea that they can be guided by the Consumer Protection Act alleging that they are Statutory Government Official Bodies for offering services to consumers so they are not covered by Consumer Protection Act and challenging the decision of National Commission, Lucknow Development Authority preferred appeal before Apex Court but passing a very exhaustive Judgment (Lucknow development Authority vs. M. K. Gupta reported in 1993 (1) CTJ Page 929) decided the very wide meaning of "Service" and came to a conclusion that legislative intention of the Act is to protect a consumer against services rendered even by statutory body and even Government Housing Board and other and further decided that no Authority can claim any immunity to the extent protected by that statute itself and no doubt that Judgment interpreted the wide scope of the definition of "Service" which is not applicable against both private and public service providers.

By that Judgment Hon'ble Apex Court has specifically held that the provisions of the Act have to be construed in favour of the consumer to achieve the purpose of the enactment as it is a social benefit oriented legislation and at the same time the very definition of the "Consumer", "Trader", "Unfair Trade Practice", "Service" have got a wider ambit.

Further by a Judgment passed in Bareilly Development Authority vs. Ajay Paul Singh reported in AIR 1989(SC) Page 1076 Apex Court observed that Cost fixed at the term of agreement may vary if construction cost is increased due to increase in price of the construction materials, escalation cost should be paid by the intended purchaser but same shall be decided by the Forum no doubt and direction for payment of escalation charge is not arbitrary and unreasonable.

By another Judgment in Indian Oil Corporation vs. Consumer Protection Council, Kerala reported in 1994 (1) CPR 255 (SC) it is already held that if Gas Agency gives connection unauthorizedly to any customer on the strength of obtaining possession of such a connection it is not open to customer to foist a contract on the Corporation and such complaint is not maintainable.

In a case Mayor, Calcutta Corporation vs. Tarapada Chatterjee reported in 1994 (1) CPR 87 and 1994 (1) CPJ 99 (SC) it is specifically observed that payment of tax to the Government and Government stating authority goes to Government consolidated fund of India or State and Private or Public function of Municipality or Corporation is statutory duties and functions and any service rendered by them is not availing or hiring a service and so tax payers are not consumer in the eye of Law and such a dispute is not consumer dispute and in fact by that Judgment the decision of State Commission and District Forum were set aside and complaint of Tarapada Chatterjee was dismissed.

In Civil Appeal No. 4024/2003 Apex Court passed Judgment reported in 2004 CTJ (Supreme Court) CP Page 1009 and held that in case of Medical Negligence once allegation is made that patient was admitted in any particular hospital and evidence of lack of proper care is the cause of death of the patient the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor and also hospital and if in such a case it will not absolve the hospital. Similarly, the actual blame against doctor for the outcome of the treatment has to be attributed with great care as held by Apex Court in case of Ms. Sus Malhotra vs. Dr. A. Kripalani and Others in Civil Appeal No. 1386/2009 reported in 2009 CTJ 472 (Supreme Court) (CP).

In public auction of existing sites the purchaser lessee is not a customer or service provider and the grievance does not relate to any matter in regard to which a complaint can be filed under Consumer Act as held by Supreme Court in U.T. Chandigarh Administration and Others vs. Amarjit Singh and Others reported in 2009 CTJ 486 (SC). “The Provision of Section 24A of the C. P. Act, 1986 is preemptory in nature and requires a Consumer Forum to see before it admits a complaint that it has been filed within two years from the date of accrual of cause of action. The Forum however for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown” is the

verdict of Apex Court in Case of State Bank of India vs. B. S. Agriculture Industries (I) reported in 2009 CTJ 481 (Supreme Court) CP.

About insurance policy it is settled by Supreme Court of that Proposal Form is integral and essential part of the insurance policy as commercial document and surveyors report cannot be the basis of construction of the insurance policy and terms and conditions of the policy shall be strictly construed to determine the extent of liability of the insurer in Vikram Greotech (I) Ltd. & Another vs. New India Assurance Co. Ltd. reported in 2009 CTJ 465 (Supreme Court) CP.

Where possession of a flat is given at the old rate the party has got the benefit of escalation in price of land and therefore there cannot be any award of interest on the amount by the Allottee on the ground of delay in allotment which is the vital pronouncement in respect of claim of interest by the party consumer for delivering possession at belated stage in the case of Hariyana Urban Development Authority vs. Raja Ram reported in 2009 CTJ Page-1 (Supreme Court) Volume-3 has in fact ultimately resolved the divergent verdicts on the point of electricity theft and dishonest abstraction of energy passed by Appellate Forum of different States including National Commission what resulted in closing the doors of the consumer and now it is clear position of the Electricity Act, 2003 that no consumer has right to file any complaint in respect of any action taken Sec. 126 and 135 to 140 of the Electricity Act and Consumer Forum is also debarred to take any contingency in respect of any matter related to Sec.-126 and 135 of the Electricity Act, 2003.

About interest there is a ruling of the Apex Court to the effect that there is no hard and fast rules for award of interest as reported in 2013 (4) CPR 405 (SC) in a case of Ghaziabad Development Authority vs. Balbir Singh. Banks sometimes force the poor villagers to various litigative Forums though they should stand for providing financial benefits to the villagers and so Forum should discourage such unintended litigations as observed by the Supreme Court in an appeal by Gurgaon Gramin Bank vs. Sm. Kharam & Another reported in 2013 (4) CPR 377 (SC).

But keeping in mind about professionalism of doctors and hospital authorities, horrible Judgment passed in Dr. Baidya Nath Halder, Dr. Sukumar Mukherjee & Advance Medicare Research Institute vs. Kunal Saha reported in 2013 (4) CPR 284 (SC) which have

shaken the doctors and hospital authorities also and at the same time it is held about nature of medical negligence including quantum of compensation and also hold that the cultural ,social and economic background of the patient should be considered for ascertaining the quantum of compensation including on the ground long drawn process of pending case and the said Judgment has no doubt opened the pragmatic views of the Fora at all levels and it is no doubt a guideline of landmark Judgment to educate the Fora in deciding medical negligence cases.

Further in so many cases of Hon'ble National Commission wherein it has been observed and decided even if any particular item is insured and if no intimation regarding transfer of ownership is intimated by the transferee owner of the item, such a transferee is not entitled to get any benefit of insurance coverage of that item, if it is damaged or lost but such sort of Judgment as per the principle is not correct what has been already decided by the Apex Court in case of Mallamma (dead) by LRS vs. National Insurance Co. Ltd. reported in CLT 2014 (3) Vol. 63 at Page-1 and it is held that insurance policy is deemed to be transferred with transfer of ownership of vehicle or the unit or article or goods, animal and policy which will not lapse but fact remains, even after this Judgment, Hon'ble National Commission passed previous nature of Judgment by neglecting the Judgment of highest judicial authority of the country and also appellate authority of the Hon'ble National Commission.

Regarding the cause of Action as per provision of Sec.-17(2) of the C. P. Act, branch office means where the cause of action has arisen but it does not mean that a complaint against O.P. could have been filed anywhere in India where any company's branch office is situated and in this regard in a case of Semi Surgical vs. National Insurance Co. Ltd. reported in 2010 CTJ 2 (Supreme Court) Apex Court decided the long standing complication about the meaning of Section as per C.P. Act regarding the definition of Branch Office.

It is held in a case of New India Assurance Co. Ltd. vs. Juari Industries Ltd. & Others reported in 2010 CTJ 5 (Supreme Court) CP that the proximate cause is not the cause which is the nearest in time or place but the active and efficient cause that sets in motion a train or chain of events which bring about ultimate result without intervention of

any other force working from an independent source and the present decision is against a Surveyor's report in insurance claim.

In a case of National Insurance Co. Ltd. vs. Laxmi Narayan Dhut reported in 2007 CTJ 445 (Supreme Court) Apex Court decided that a statute is an edict of the legislature and in construing the same, it is necessary to seek the intention of its maker. If a provision is open to move there are interpretations which represent the true intention of the legislature and considering the above principle it is clear that once a license is fake one, the renewal cannot take away the effect of fake license.

Another landmark Judgment of the Hon'ble Apex Court in a case of Standard Chartered Bank Ltd. vs. Dr. B. N. Pawan reported in 2006 CTJ 841 (Supreme Court), has finally decided that activities relating to non-sovereign powers statutory bodies are within the purview of the Consumer Protection Act and so the function of statutory bodies come under the term "Service" as defined in its Section 2(1)(o) under C.P. Act, 1986.

The above Judgments of Apex Court are discussed only on the ground that in those Judgments the Hon'ble Apex Court not only heard Appeal but also exposed the need to make Redressal Machinery more accessible for protecting the consumers at large by giving proper interpretations of the Act in wider aspect and term and in fact consumers at large have been saved from the tyranny conflicting Judgments of Hon'ble State and National Commission. Further, the chariot of present Act got such life to breathe in true sense to proceed with full force after 1995 though C.P. Act, 1986 came into force in the year 1987.

4.7: Conclusion

Consumers should be better informed about the price and the quality of goods they are going to buy. They must get the actual information on the products and their services based on which they can make well-informed decisions on what they are buying and from whom they are buying. If they are knowledgeable about all of these, then they will become the active participants in the entire process. Thus, consumer education ensures that producers/sellers are held accountable by governing agencies and the consumers who use the products and services. Consumers in many cases do not get their money's worth from the goods and services they bought. Their loss may be on account of both quality and price.

It is necessary that traders and business establishments should strictly comply with various regulations relating to consumer rights and at the same time consumers have to be conscious while buying goods and avail services as well as they should know the legislative support for them and for their protection.

On overall views of such decisions of the Hon'ble Apex court, it is the stepping stone towards economic reform process of Indian economy, since it is gradually being transformed from a predominantly 'sellers' market to a buyers' market where choice exercised by the consumers depends on their awareness level. Consumer rights could be protected in a competitive economy only when right standard of goods and services for which one makes payment are assured by evolving a network of institutions and legal protection system. Ensuring consumer welfare is the responsibility of the Government as every citizen of the country is a consumer in one way or the other. The need of the hour is for total commitment to the consumer cause and for social responsiveness to the consumer needs. This should however, be proceeded in a harmonious manner so that our society becomes a very good place to live in.