

Protection of consumers Rights: A challenge to the efficacy of consumer Forum

Dr. Gyanendra Kumar Sahu

Lecturer, P.G. Dept. of Law, Utkal University, Vanivihar, BBSR

Abstract

The concept of consumer protection has assumed great importance in modern jurisprudence. While it was previously believed to be the buyers responsibility to use his care and skill when entering into any transactions or making any purchases in the market, the maxim "cavet emptor" or let the buyer beware was the general rule. But things have changed and today the consumers are in a position to declare 'sellers beware'. Today consumer is the King this change has been brought about not just because of change in the economic and financial market dynamics but also effective consumer laws.

Keywords: Protection, consumers Rights.

Introduction

India is a vast country where a majority of consumers are poor helpless and disorganized. Further the market in India is generally a seller market and it is very easy to dupe the innocent consumers. It is now realised that a common consumer is neither knowledgeable nor well informed. He needs support and protection from unscrupulous seller. A common consumer is not in a position to approach civil court. Quick, cheap and speedy justice to his complaints is required. The central Government enacted a law in the year 1986 for the protection of consumers known as The consumer Protection Act 1986. The Importance of the consumer protection Act 1986 lies in promoting welfare of the society in as much as it attempts to remove the helplessness of a consumer which he faces against powerful business class. Previously it was believed to be the buyer's responsibility to use his care and skill when entering into any transactions or making any purchases in the market let the buyer beware. But things have changed and today the consumers are in a position to declare 'sellers beware'. Today consumer is the King this change has been brought about not just because of change in the economic and financial market dynamics but also effective consumer laws.

Objectives of Consumer Protection Act:

The consumer protection Act 1986 seeks to provide for protection of the interests of the consumers in general. The Act has recognised the following six rights of the consumers:

a. Right to consumer education:

The right to consumer education is an important right available to the consumers. Information about the consumer products in the market and for the proper functioning of the legal system it is the necessary that the knowledge of the availability of a legal remedy should be so widely explained advertised and circulated so that people as a whole become conscious of their rights.

b. Right to Safety:

The consumer has a right to be protected against marketing of goods which are hazardous to life and property of the consumers.

c. Right to Seek Redressal:

The consumer has been given the right to seek redressal against unfair trade practices or their unscrupulous exploitation. The consumer should have some means of redress when goods fail to live up to their promise or indeed cause injury.

d. Right to be heard:

The right to be heard also include the right to be assured that the consumer interest will receive due consideration at appropriate forums. The consumer disputes should be resolved in a fair and expeditious manner.

e. Right to choose:

The right to choose means the right to be assured. Wherever possible, access to a variety of goods and services at competitive prices. Air and effective must be encouraged in order to provide consumers with the greatest range of choice among products and services at the lowest price.

f. Right to information:

The consumer has been given the Right to be informed by the producer about the quality, quantity potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. The right to obtain adequate information is an important right which enables the consumer to take intelligent decision at the time of purchasing any goods or hiring any services. For the first time a statute recognised that a consumer had certain specific rights for this purpose for protection of these rights the consumer protection Act makes provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes.

The Act provides a quick and easy access to redressal of consumer grievances. A redressal machinery is provided for in the Act for the enforcement of the rights of the consumers. It is laid down in the Act that quasi-Judicial machinery, in the shape of special consumer courts. The machinery is to comprise in a three-tier structure of the district forum, a state commission for redressal of consumer grievances at every State and union territory level and a national commission at the apex level in Delhi.

Filing of Complaint

Complaint can be filed by a complainant. The term complainant is defined in section 2(1)(b) and means

- (i) A consumer ^[1]
- (ii) Any voluntary consumer association registered under the companies Act 1956.
- (iii) The central Government or any State Government
- (iv) One or more consumers, where there are numerous consumers having the same interest.
- (v) In case of death of a consumer, his legal heir or representative ^[2].

The term consumer includes one who buys goods or hires services exclusively for purpose of earning his livelihood as self-employment. It has decided in the case of *Kody Elcot Ltd v DR. C.P. Gupta (1996) NCDRC – 4CTJ 48*.

The complainant was engaged in the medical profession and running a nursing home and clinic. He had purchased from the appellant company the equipment at a price of Rs.3.85 Lakhs in July 1990 with a warranty. The machine started giving problems which could not be rectified. Consequently the doctor (Complainant), after serving a notice on the manufacturer, filed a complaint before the state commission at luck now and obtained a favourable order. The manufacturer appealed to the National Commission which upheld the verdict of the state Commission, as the equipment was used personally by the complainant for earning his livelihood.

Procedure for filing complaints

Procedure for filling complaints and seeking redressal are simple and speedy. A complaint should contain the following information

- (i) Any allegation in writing made by complainants regarding certain grievances as provided under the Act ^[3]; and the fact relating to complaint and when and where it arose.
- (ii) The name, description and the address of the complainant or authorised agent.
- (iii) The name description and address of the opposite party/parties as the case may be.
- (iv) The documents if any and affidavit in support of the allegations contained in the complaint.
- (v) The relief asked for by complainant.
- (vi) Complaint should be signed by the complainant or his authorised agent.
- (vii) Prescribed fee for filing a complaint before Consumer Redressal Forum is to be deposited.
- (viii) Complaint can be presented before Consumer Redressal forum by complainant/authorised agent in person.
- (ix) Also complaint can be sent by registered post in order to be filed before Consumer Redressal Forum. It has been held that the complaint filed without entire facts and pleadings, poorly drafted and even not corroborated with any documents in support of the case, the commission should proceed in the case in the interest of Justice.

Fee for making complaints before district forum:

Anybody filling a complaint in district forum will have to pay fee in proportion to the compensation ^[4], up to one lakh amount of fee Rs.100, One lakh to five lakh Rs.200, Five lakh to ten lakh Rs.400 and rupees Ten lakh to twenty lakh Rs 500. A person seeks in his complaint in the form of a crossed demand draft drawn on a nationalised bank or through a Crossed Indian Postal order. However there is no fee for filling a complaint before the State Commission or the National Commission.

Procedure on receipt of complaint

The first step is to decide about the admissibility of the complaint by the forum within 21 days of its receipt. Second step is to refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of 30 days and can extend for 15 days. Where the alleged defect in the goods is such that it cannot be determined without proper analysis or test of the goods, the forum should obtain the sample of the goods from the complaint and sent to an appropriate laboratory in 45 days. Finally before issuing any final order the district Forum will provide an opportunity to both the parties to present their views about the report before the forum. The District forum the State Commission or National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen ^[5].

Relief available to consumers:

- (i) To remove the defects as complained in the complaint-petition.
- (ii) To replace the goods with the new goods
- (iii) To refund the price paid by the complainant.
- (iv) To award appropriate and reasonable compensation for any loss or injury caused to the consumer-complainant.
- (v) To remove deficiencies in the service in question.
- (vi) Discontinue the unfair trade practice.
- (vii) To restrain and withdraw themselves from selling hazardous goods to life.
- (viii) Award apart from compensation adequate and reasonable costs to the parties.

Jurisdiction of the District Forum

Section 11 provides for the jurisdiction of the District Forum under two criteria-pecuniary and territorial. The District Forum can entertain complaints where the value of goods or services and the compensation, if any claimed does not exceed rupees twenty lakhs ^[6]. Under territorial limit the opposite party at the time of the institution of the complaint voluntarily resides or carries on business or has branch office or the cause of action wholly or in part arises in the same local limits.

In the case of Dynavox Electronic Private Ltd v B.J.S Rampuria Jain College Bikaner it was held that where in a contract the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place. Therefore the complaint could be instituted in the District forum within whose Jurisdiction that place lies.

Jurisdiction of the State commission:

The State commission shall have the jurisdiction to entertain complain where the value of the goods or services and compensation if any claimed exceeds rupees twenty lakhs but does not exceed rupees one crore and appeal against the orders of any District Forum within the State may be revised by the State Commission.

Jurisdiction of the National commission:

Section 21 provides that the National Commission shall have Jurisdiction to entertain complaints where value of the goods or services and the compensation if any claimed exceed rupees one crore or entertain appeals against the orders of any State Commission.

Problems in Consumer Protection

Consumer Protection Act, as already existing, is one of the progressive pieces of legislations to have been enacted for the better protection of the consumers. Unfortunately, the spirit of the Act has been missing in its implementation.

- i. The logic is that since District Forums are not being provided with sufficient presiding officers by the state governments and since they are not able to function, resulting in delays.
- ii. The billed value of goods or services in a complaint shall be the basis to determine the pecuniary jurisdiction of a Consumer Forum to entertain a complainant. Even A fee is also being collected from the complainant based on the value of the complaint. But how one arrive the billed value of goods or services in the case of serious injury by public utilities like lift/escalators ets.After all the forum/commission have the power to dismiss frivolous complaints.
- iii. In yet another interesting unwanted or ill intention appeals affect delay in consumer justice.

Conclusion

The Consumer Protection has certain serious flaws, which will neither benefit the consumer nor the hapless voluntary consumer organisations that work for consumers. Hence certain provisions should amend to the Consumer Protection Act.

- (i) The efficacy of these bodies to provide faster justice with least harassment should be aimed. A provision can be introduced to make the State Government liable to compensate the victims for the delays necessitated due to non-functioning of such District Forums / State Commission. An amendment has been also proposed for common Forums for multiple districts.
- (ii) Proposed to introduce Mediation as a mode of minimising the consumer dispute cases instead of judicial process is likely to have adverse impact on the consumer litigant, many of whom are not aware of the law and do not know their right.
- (iii) The billed value of the goods or services alone should not be the basis to determine the pecuniary jurisdiction of the District Forums and the Commissions.
- (iv) Effort to save the National Commission from adjudicating unwanted appeals, there is a proposal to restrict the consumer litigant from not appealing more than once.

References

1. 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 and includes any user of such goods when such use is made with the approval of such person but does not include a person who obtain such goods for resale or for any commercial purpose.
2. Clause V inserted by Amendment in, 2002.
3. Section 2(1)(c) of the Consumer Protection Act 1986
4. On March 5, the ministry of Consumer Affairs has issued a new Rule 9A relating to Fee for making complaints, 2004.
5. Section 24 A of the Consumer Protection Act, 1986.
6. Section 11(2) of the Consumer Protection Act, 1986.