



Analysis of goods act 1930 and the prevention of food adulteration act 1954

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Abstract

Consumer Protection Act is not the only redressal agency available to the consumers for redressal of their grievances. Many other legislations have been enacted in India from time to time which help the common person in dealing with the violation of his rights vis-a-vis the goods and services being availed of by him. Some of the major Acts, providing for and relating to consumer interest, have been discussed in this chapter. The discussion of the provisions is as far as possible, non-legalistic and comprehensive without going into all minute details. The researcher has taken care of discussing some of the major legislations in India relating to protection of consumer interest and consumer awareness.

Keywords: good act 1930, food adulteration act 1954, trade practices act, 1969, the competition act, 2002

Introduction

Consumer Protection Act is not the only redressal agency available to the consumers for redressal of their grievances. Many other legislations have been enacted in India from time to time which help the common person in dealing with the violation of his rights vis-a-vis the goods and services being availed of by him.

Some of the major Acts, providing for and relating to consumer interest, have been discussed in this chapter. The discussion of the provisions is as far as possible, non-legalistic and comprehensive without going into all minute details. The researcher has taken care of discussing some of the major legislations in India relating to protection of consumer interest and consumer awareness.

The Sale of Goods Act, 1930

The Prevention of Food Adulteration Act, 1954

The Monopolies and Restrictive Trade Practices Act, 1969

The Competition Act, 2002

The Bureau of Indian Standard Act, 1986

The Standards of Weights and Measures Act, 1976

The Drugs and Cosmetics Act, 1940

The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

The Essential Commodities Act, 1955

The Environment Protection Act, 1986

Sale of Goods Act, 1930

The law relating to the sale of goods or movables in India is contained in the Sale of Goods Act, 1930. Before the passing of the present

Act, the law relating to the sale of goods was contained in Chapter VII of the Indian Contract Act, 1872. The provisions of Chapter VII were found to be inadequate and the present Act was passed with the main object of making the provisions more clear. The Act came into force on July 1930. It contains 66 sections and extends to the whole of India except the state of Jammu and Kashmir.

Nature & cope

Like any other contract, the contract of sale is the result of offer and acceptance by two different parties. The parties to the contract enjoy unfettered discretion to agree to any terms they like relating to delivery and payment of price. The Sale of Goods Act does not restrict or limit this discretion of the parties to the contract. According to Section 4, a sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale may be absolute or conditional. In an absolute sale, the property in the goods passes from the seller to the buyer immediately and nothing remains to be done by seller. In a conditional contract of sale, the property in the goods does not pass to the buyer absolutely until a certain condition is fulfilled. The term 'contract of sale' is a general term and comprises of - (1) sale; and (2) agreement to sell

Where the seller transfers the property in the goods immediately to the buyer, there is a sale. But where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Salient features

Sale of Goods has the following features:

Contract: The word contract means an agreement enforceable by law. It presumes free consent on the part of the parties who should be competent to contract. Thus, a compulsory transfer of goods is not a sale. All the essential elements of a valid contract must also be present in a contract of sale.

Two Parties: There must be two persons, one the seller and the other the buyer. The seller and the buyer must be two different persons. The parties must be competent to contract.

Transfer of property: There should be a transfer or agreement to transfer the absolute or general property in the

goods sold or agreed to be sold. It contemplates the transfer of the ownership in the goods. Though passing of the title in the goods is an essential ingredient of sale, physical delivery of goods is not essential.

Goods: Contract of sale must be for the goods and the property which is to be transferred from the seller to the, buyer. Goods of any kind except immovable goods may be transferred. It does not include money and other actionable claims. The seller must be the owner of the goods, the ownership of which is sought to be transferred.

Price: To constitute a valid contract of sale, consideration for transfer must be money paid or promised. Where there is no money consideration the transaction is not a contract of sale.

Condition and warranty

A stipulation in contract of sale with reference to goods which form its subject matters may be either a condition or a warranty. According 'to Section 12(2) of the Sale of Goods Act, "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. Where a stipulation in a contract of sale forms the basis of a contract, i.e., essential to the main purpose of the contract, it is a condition. These stipulations go directly to the root of the contract.

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. [Section 12(3)]. Where the fulfillment of the main purpose of the contract depends on the fulfillment of the stipulation' it is a condition and where it is not so, the stipulation is only a warranty.

Whether a stipulation in a contract is a condition or a warranty depends in each case on the construction of the contract. No special words are necessary to 'create warranty in the contract. The same phrase in two different contracts may in one case amount to a condition and in the other to a warranty.

Express and implied conditions and warranties

In a contract of sale, conditions and warranties may be expressed or implied. Expressed conditions and warranties are those which are entered in clear words in the contract. They are expressly provided in the contract of sale. Implied conditions and warranties are those which the law incorporates into the contract unless the parties agree to the contract implied conditions and warranties are enforced on the ground that the law presumes that the parties have incorporated them into their contract though they have not put them into it in express words. Thus, stipulation relating to title merchantability, etc. are considered to be so important that they are treated as implied conditions.

The Prevention of Food Adulteration Act, 1954

The Prevention of Food Adulteration (FA) Act, 1954, as its name suggests is an act to prevent adulteration of food in order to protect the health of the public. However, the manner in which the ' Act has worked, or come to be implemented by the authorities over the last 50 years, made it quite ineffective. At the same time it is important to remember that it contains

some excellent provisions for consumer interest and undoubtedly it covers a very wide area, making provisions for all things, connected with 'food' and 'adulteration'. The provision that ' lessens the efficacy of the Act, may be removed with persistent consumer effort.

Meaning and Scope

The Act contains important definitions (Sec.2). Adulterated food means any food which is not of the quality demanded by the consumer, or as it is represented to be; or contains something that affects the quality of the food, or is stored in conditions that have affected the quality; or the food is rotten or decayed and otherwise unfit for human consumption, or if the article is obtained from a diseased animal.

'Food' has also been defined to mean any food or drink used for human consumption. But it does not include 'drugs' or water, but flavoring substance spices, are included. Thus ice, chewing tobacco (Zarda) have been held to be foods.

Salient Features

The most important feature of this Act is that it is a 'strict liability, statute. 'Means real', or necessity to prove a 'guilty mind' on the part of the offender is not necessary, provided it is proved that the offender has done something contrary to the provisions of the Act.

Under the Act, it is true that an individual or a consumer organization may take a sample of food suspected to be adulterated, and get it tested (Sec. 12). But the elaborate procedure prescribed under the Act for Food Inspectors (Sec. 11) must also be followed by the consumer. Worse, while taking the sample, the consumer must inform the seller beforehand that he has taken the sample for testing purposes. (Sec.12). This means that if an unsuspecting purchase finds the foods adulterated after he has taken it away from the shop, he has no remedy. Except that, he may go and give the sample to the Food Inspector. or the Public Analyst who will test the sample, and may be persuaded to go back to the seller and take fresh samples in order to. comply with the procedure under the Act. By that time the original sample may not be available with the seller, or having been put on guard, the seller may deliberately destroy the adulterated foodstuff in his possession.

Among other powers a food inspector also has the power to get medically examined any seller or manufacturer of food. if the later is suffering from any infectious disease according to the inspector. On medical examination, if the presence of disease is confirmed the inspector shall prohibit that person from manufacturing or selling any food article (Rule 13, PEA Act).

Section 12 contains another serious limitation in so far as individual consumers or consumer organizations are concerned. Even if the sample submitted to the Public Analyst under the Act is found to be adulterated after testing, only the Food Inspector may prosecute the seller. The consumer or consumer organization can only get a refund of the testing fees, but cannot initiate prosecution.

Under this Act, any person who directly sells an adulterated misbranded food article, contrary to provisions of this Act is punishable (Sec.?). Even if he keeps such adulterated/misbranded article for the purpose of

manufacturing of food articles is also punishable. Manufacturers, distributors and dealers of food articles must give a written warranty regarding its quality and nature to the vendor. A bill, cash memo, invoice are all deemed warranties under section 14, and on demand by the Food Inspector. A vendor is bound to disclose the name of person from whom he purchased the food article for the purpose of resale (sec.14-A). This is another self-defeating provision so far as consumers are concerned. Only a food inspector can demand this information, not a consumer. In reality it would be a consumer who is affected, by sale of adulterated, misbranded or otherwise harmful to him.

Because of certain other provisions in this Act (Sec.19, 20), successful prosecution under this Act, by a consumer, or a consumer organization is difficult, if not impossible. Any vendor is not guilty if he can prove that he purchased goods from the manufacturer, dealer or distributor who had a valid licence, or gave a warranty. Further no prosecution under the Act is possible without the written consent of the Central and State Government. However, if the sale of adulterated food is proved and it is further proved that such adulterated food could have caused death, or grievous bodily harm, the offender can be punished with life imprisonment, or in any case imprisonment for minimum 3 years and a fine of five thousand rupees.

Under Sections 23 & 24, the Central and State Government have very wide powers. These powers, illustratively, cover classification of food articles, defining standards, control over production, distribution & sale of food packages, licensing & conditioning thereof.

It would be advisable to look into rules under this Act. In particular, Rule 23, Part VI onwards contain detailed provisions regarding colouring matter, labelling and packaging information, prohibition of use of certain words, devices and size. It is useful to know that every food package must be labelled and must carry on it, the name, and description of the food inside. The names of ingredients must also be mentioned in the descending order of their composition, (whether by weight or volume - Rule 32). The sale rule also specifies that the quantity or weight mentioned on the label, must exclude the weight of wrappers or materials used in the package. When it is claimed that a food is enriched with nutrients, the quantity of such nutrients must be specified on label (Rule 32. A). The information must be provided either in English or Hindi (Devnagri Script).

Rules 34 to 37 provide for size and types to be used for declaration, and prohibit false and misleading statement on labels. It must not use words, indicating that the food has been recommended by the medical profession (Rule 39). Also any syrup, juice, squash which does not contain the prescribed amount of juice, must carry the word 'SYNTHETIC,' on the label. Further, the label cannot carry any picture, device of any fruit on it, nor can the word 'fruit' be used on the label (Rule 40).

Any drink alleged to be fortified with vitamin C, must contain at least 40gm of ascorbic acid per 100 gm. of the product. The use of carbide gas is prohibited for artificial ripening of fruits (R 44- AA). A number of fruits like papayas, and mangoes are artificially ripened by use of the gas. So even though the fruit appears golden and ripe, because the chemicals have not been

converted in the fruit it will taste sour. "Other important provisions which may be mentioned are those on preservatives (Part X), Poisonous Metals (Part XI), Crop Contaminants & Naturally Occurring Toxic Substance (Chap XI- A), Flavouring Agents (Part - XIII), Insecticides and Pesticides (Part - XIV). These are pointed out because it is felt that they would be invaluable to any consumer group working specifically in the area of food adulteration and related consumer problems.

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